

Ordinance No. 121839

Council Bill No. 115270

AN ORDINANCE relating to the Ship Canal Trail; accepting deeds and easements; transferring jurisdiction of certain real property near the Ballard Bridge from the Fleets and Facilities Department to Seattle Department of Transportation; authorizing the execution and delivery of deeds of right to the State of Washington; authorizing the acquisition of property and acceptance of deeds; and authorizing the execution and delivery of a crossing easement agreement.

CF No. \_\_\_\_\_

Date Introduced:	MAY 31 2005	
Date 1st Referred:	To: (committee)	
Date Re - Referred:	MAY 31 2005 To: (committee) TRANSPORTATION	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote: 8-0	
Date Presented to Mayor:	Date Approved: 6/29/05	
Date Returned to City Clerk:	Date Published: 8 P.P. 5/5/05	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department  
Council Bill/Ordinance sponsored by: \_\_\_\_\_

Richard Conlin  
Councilmember

Committee Action:

6/14/05 - passed 2-0 of Conlin, Gidden

6-20-05 Passed 8-0 (Excused: Compton)

This file is complete and ready for presentation to Full Council. Committee: RC 6/14/05  
(initial/date)

Law Department

Law Dept. Review

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ORDINANCE 121839

AN ORDINANCE relating to the Ship Canal Trail; accepting deeds and easements; transferring jurisdiction of certain real property near the Ballard Bridge from the Fleets and Facilities Department to Seattle Department of Transportation; authorizing the execution and delivery of deeds of right to the State of Washington; authorizing the acquisition of property and acceptance of deeds; and authorizing the execution and delivery of a crossing easement agreement.

WHEREAS, Ordinance 114900 authorized the acquisition of real property and real property rights through negotiation for certain trail projects, including the Ship Canal Trail; and

WHEREAS, the City has previously, under authority of Ordinances 117468, 117618 and 118343, accepted real property and property rights between the Fremont Bridge and the Ballard Bridge for Phases I and II of the Ship Canal Trail, including a Quitclaim Deed from Burlington Northern Railroad Company for Phase I of the Ship Canal Trail; and

WHEREAS, certain property was unintentionally omitted from Burlington Northern Railroad Company's Quitclaim Deed to the City; and

WHEREAS, the Burlington Northern and Santa Fe Railway Company, formerly Burlington Northern Railroad Company, has corrected its Quitclaim Deed to the City and the City now desires to accept the corrected deed; and

WHEREAS, the City has acquired additional real property and real property rights between 8<sup>th</sup> Avenue West and West Emerson Street for Phase II of the Ship Canal Trail from Argonaut Properties, Inc., the Burlington Northern and Santa Fe Railway Company, and King County, and the City desires to accept the easements and deeds; and

WHEREAS, the City requires additional property, currently owned by the Port of Seattle, and the Burlington Northern and Santa Fe Railway Company, for Phase II of the Ship Canal Trail; and

WHEREAS, additional real property, currently under the jurisdiction of the Fleets and Facilities Department, is needed for Phase II of the Ship Canal Trail; and

WHEREAS, Resolution 29799 adopted policies and procedures and a process for notifying other City departments or other government agencies of the potential availability of property excess to department needs; and



1 WHEREAS, after being notified of the potential availability of property identified in Section 8  
2 below, no other City department or other government agency has requested jurisdiction or  
3 has proposed a public use of the property, and the Fleets and Facilities Department  
4 desires to transfer jurisdiction to the Seattle Department of Transportation; and

5 WHEREAS, under authority of Ordinance 118683, the City entered into a project agreement with  
6 the State of Washington, through the Interagency Committee for Outdoor Recreation, for  
7 grant funds for acquisition of real property for Phase II of the Ship Canal Trail ("Phase II  
8 Project Agreement"); and

9 WHEREAS, the Phase II Project Agreement required the City to convey and grant to the State of  
10 Washington Deeds of Right to Use Land for Public Recreation Purposes ("Deeds of  
11 Right") concerning the real property acquired for Phase II of the Ship Canal Trail no later  
12 than June, 2004; and

13 WHEREAS, to secure the grant funding, three Deeds of Right were recorded on March 30, 2004  
14 under King County recording numbers 20040330000933, 20040330000934 and  
15 20040330000935; and

16 WHEREAS, in consideration for the City's agreement to relinquish rights to purchase certain  
17 real property from the Burlington Northern and Santa Fe Railway Company, Foss  
18 Maritime Company ("Foss") and FRC/BN Ewing Street LLC ("LLC"), owners of  
19 property abutting the Ship Canal Trail, agreed to replace certain railroad crossing  
20 easements with easements acceptable to the City and to quitclaim their interests, if any, in  
21 portions of the Ship Canal Trail;

22 NOW, THEREFORE,

23 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

24 Section 1. The Quitclaim Deed (Correction) from the Burlington Northern and Santa Fe  
25 Railway Company, formerly Burlington Northern Railroad Company, dated December 29, 2003  
26 and recorded under King County recording number 20031230001962, a copy of which is  
27 attached hereto as Attachment 1 and incorporated herein ("Phase I Correction Deed"), is hereby  
28 accepted for recreation and transportation purposes consistent with the interim trail use and



1 railbanking provisions of the National Trail Systems Act (16 U.S.C. Section 1241 et seq.) and  
2 that certain Offer to Purchase and Interim Trail Use/Railbanking Agreement dated December 28,  
3 1994 between Burlington Northern Railroad Company and the City. The real property described  
4 in the Phase I Correction Deed shall be under the jurisdiction of the Seattle Department of  
5 Transportation.  
6

7  
8 Section 2. The Easement granted by Argonaut Properties, Inc. by Easement Agreement  
9 dated September 27, 2001 and recorded under King County recording number 20010927002918,  
10 a copy of which is attached hereto as Attachment 2 and incorporated herein, is hereby accepted  
11 for multi-purpose trail purposes and placed under the jurisdiction of the Seattle Department of  
12 Transportation.  
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14  
15 Section 3. The Quitclaim Deed from the Burlington Northern and Santa Fe Railway  
16 Company, dated December 29, 2003 and recorded under King County recording number  
17 20031230001963, a copy of which is attached hereto as Attachment 3 and incorporated herein  
18 ("Phase II Deed"), is hereby accepted (a) for recreation and transportation purposes consistent  
19 with the interim trail use and railbanking provisions of the National Trail Systems Act (16 U.S.C.  
20 Section 1241 et seq.) and that certain Agreement by and between the Burlington Northern and  
21 Santa Fe Railway Company and the City of Seattle Concerning the Transfer of Land and Other  
22 Property Interests, the Relocation of Track, the Correction of a Deed and Interim Trail  
23 Use/Railbanking Agreement dated December 29, 2003, as to the real property described in  
24  
25  
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1 Exhibit A to the Phase II Deed, and (b) for multi-purpose trail purposes as to the real property  
2 described in Exhibit B to the Phase II Deed. The real property described in the Phase II Deed  
3 shall be under the jurisdiction of the Seattle Department of Transportation.  
4

5 Section 4. The Easement granted by the Burlington Northern and Santa Fe Railway  
6 Company dated July 27, 2004 and recorded under King County recording number  
7 20040730002147, a copy of which is attached hereto as Attachment 4 and incorporated herein, is  
8 hereby accepted for multi-purpose trail purposes and placed under the jurisdiction of the Seattle  
9 Department of Transportation.  
10  
11

12 Section 5. The Warranty Deed from King County dated August 20, 2004 and recorded  
13 under King County recording number 20040820002059, a copy of which is attached hereto as  
14 Attachment 5 and incorporated herein ("King County Deed"), is hereby accepted for multi-  
15 purpose trail purposes. The real property described in the King County Deed shall be under the  
16 jurisdiction of the Seattle Department of Transportation.  
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18

19 Section 6. The Director of Transportation or her designee is hereby authorized, on behalf  
20 of the City of Seattle, to acquire from the Port of Seattle the following described real property for  
21 Phase II of the Ship Canal Trail for a purchase price equivalent to fair market value, as  
22 determined by appraisal:  
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1 Lot 10, Block 100, Gilman's Addition to the City of Seattle, according to the plat thereof  
2 recorded in Volume 5 of Plats, page 93, in King County, Washington;  
3 EXCEPT that portion condemned by the city of Seattle for street purposes on July 16,  
4 1959, under King County Superior Court Cause No. 516133.

5 Upon delivery of a deed, from the Port of Seattle ("Port Deed"), the Director of Transportation or  
6 her designee is hereby authorized to accept the Port Deed on behalf of the City of Seattle by  
7 attaching to the deed her written acceptance thereof, and to record the same. The real property  
8 described in the Port Deed shall be accepted for multi-purpose trail purposes and placed under  
9 the jurisdiction of the Seattle Department of Transportation.

10  
11 Section 7. The Director of Transportation or her designee is hereby authorized, on behalf  
12 of the City of Seattle, to acquire from the Burlington Northern and Santa Fe Railway Company  
13 the following described real property for Phase II of the Ship Canal Trail for a purchase price  
14 equivalent to fair market value, as determined by appraisal:  
15

16 That portion of the Unplatted Reserve A, Gilman's Addition to the City of Seattle, King  
17 County, Washington Assessors Parcel number 7666200105, situate in the Northeast  
18 quarter of Section 14, Township 25 North, Range 3 West of the Willamette Meridian,  
19 described as follows:

20 Beginning at the Southeast corner of Lot 20, Block 100 of Gilman's Addition to the City  
21 of Seattle, as recorded in Volume 5 of Plats, Page 93, records of King County,  
22 Washington, said point also being the intersection of the North margin of (?) W. Emerson  
23 St and the West margin of vacated alley per condemnation order number 88352;  
24 Thence S 89° 50' 03" W, along the North margin of W. Emerson St., 116.99 feet, more  
25 or less, to a point that intersects a line that is 5 feet westerly and parallel with the east line  
26 of said Reserve A, and the Point of Beginning;  
27 Thence N 26° 01' 43" E, along said parallel line, 73 feet;  
28 Thence S 39° 59' 05" W, 85.64 feet, more or less, to the North margin of W. Emerson St;





Thence N 89° 50' 03" E, along the North margin of W. Emerson St, 23 feet, more or less, to the Point of Beginning.

Containing 753 square feet or .02 acres, more or less.

Upon delivery of a deed from the Burlington Northern and Santa Fe Railway Company ("BNSF Deed"), the Director of Transportation or her designee is hereby authorized to accept the BNSF Deed on behalf of the City of Seattle by attaching to the deed her written acceptance thereof, and to record the same. The above-described real property shall be accepted for multi-purpose trail purposes and placed under the jurisdiction of the Seattle Department of Transportation.

Section 8. Jurisdiction over the following described real property is hereby transferred from the Fleets and Facilities Department to the Seattle Department of Transportation for multi-purpose trail purposes:

Parcel A

Lot 11 of Block 100 of the Plat of Gilman's Add as recorded in Volume 5, Page 93 of Plats, Records of King County, Washington being in the NW 1/4 of Sec 13, T25N, R3E and the NE 1/4 of Sec 14, T25N, R3E WM.

Except the northwesterly 20 feet as measured parallel with the northwesterly line of said lot.

Except that portion of said lot 11 that was condemned for street right-of-way purposes for the W. Nickerson St. ramp to 15th Ave. W. recorded in the City of Seattle Condemnation Ordinance #88352.

Area of this parcel is approximately 412 square feet.

Parcel B

The northeasterly 6 feet of Lot 15 of Block 100 of the Plat of Gilman's Add as recorded in Volume 5, Page 93 of Plats, Records of King County, Washington as measured parallel with the northeasterly line of said lot.

Area of this parcel is approximately 63 square feet.



1  
2 Section 9. The Director of Transportation or her designee is hereby authorized, on behalf  
3 of the City of Seattle, to execute and convey Deeds of Right to Use Land for Public Recreation  
4 Purposes from the City of Seattle to the State of Washington, consistent with the Phase II Project  
5 Agreement, to secure grant funding from the State of Washington, through the Interagency  
6 Committee for Outdoor Recreation.  
7

8  
9 Section 10. The Director of Transportation or her designee is hereby authorized on behalf  
10 of the City of Seattle to enter into an easement agreement with FRC/BN Ewing Street LLC and  
11 Foss Maritime Company, substantially in the form attached hereto as Attachment 6 and  
12 incorporated herein, granting easements for crossings and utilities across the Ship Canal Trail.  
13  
14

15 Section 11. The Director of Transportation or her designee is hereby authorized on behalf  
16 of the City of Seattle to accept a quitclaim deed from FRC/BN Ewing Street LLC and Foss  
17 Maritime Company substantially in the form attached hereto as Attachment 7 and incorporated  
18 herein.  
19  
20

21 Section 12. Any act consistent with the authority and prior to the effective date of this  
22 ordinance is hereby ratified and confirmed.  
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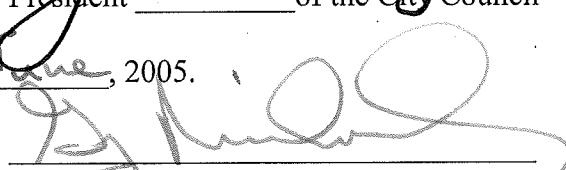


Section 13. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 20<sup>th</sup> day of June, 2005, and signed by me in open session in authentication of its passage this 20<sup>th</sup> day of June, 2005.

  
President \_\_\_\_\_ of the City Council

Approved by me this 29<sup>th</sup> day of June, 2005.

  
Gregory J. Nickels, Mayor

Filed by me this 30<sup>th</sup> day of June, 2005.

  
City Clerk

(Seal)

Attachment 1: Quitclaim Deed (Correction) from the Burlington Northern and Santa Fe Railway Company to the City of Seattle (Phase I)

Exhibit A to Attachment 1: Legal Description

Exhibit A-1 to Attachment 1: Legal Description

Attachment 2: Easement Agreement between Argonaut Properties, Inc. and the City of Seattle

Exhibit A to Attachment 2: Legal Description of Grantor's Property

Exhibit B to Attachment 2: Legal Description of Trail Easement Area and Permitted Exceptions

Attachment 3: Quitclaim Deed from the Burlington Northern and Santa Fe Railway Company to the City of Seattle (Phase II)

Exhibit A to Attachment 3: Legal Description of Railbank Premises

Exhibit B to Attachment 3: Legal Description of Sale Premises

1 Attachment 4: Easement granted by the Burlington Northern and Santa Fe Railway Company to  
2 the City of Seattle

3 Exhibit A to Attachment 4: Legal Description of Parcel H (BNSF Crossing Easement)

4 Attachment 5: Warranty Deed from King County to the City of Seattle

5 Attachment 6: Crossing Easement Agreement among Foss Maritime Company, FRC/BN Ewing  
6 Street LLC and the City of Seattle

7 Exhibit A to Attachment 6: Legal Description of Trail Property

8 Exhibit B-1 to Attachment 6: Legal Description of FRC Property

9 Exhibit B-2 to Attachment 6: Legal Description of Foss Property

10 Exhibit C to Attachment 6: Legal Description of Crossing Areas

11 Attachment 7: Quitclaim Deed from Foss Maritime Company and FRC/BN Ewing Street LLC to  
12 the City of Seattle

13 Exhibit A to Attachment 7: Legal Description of Trail Property (portions of Phase II)





## Return Address

City of Seattle S-DOT R/W  
709 Fifth Avenue Suite 3900  
Seattle, WA 98104-3043



20031230001962

PACIFIC NW TIT GCD 41 00  
PAGE001 OF 023  
12/30/2003 15.50  
KING COUNTY, WA

Document Title(s) (or transactions contained therein)	
1 Quitclaim Deed	
Reference Number(s) of Documents assigned or released: (on page <u>2</u> of document)	9501270808 23/41 PNWT
Grantor(s) (Last name first, then first name and initials)	W6975-12
1 The Burlington Northern and Santa Fe Railway Company	
Grantee(s) (Last name first, then first name and initials)	City of Seattle
1 The City of Seattle	
Legal Description (Abbreviated i.e. lot, block, plat or section, township, range)	
Portions of E $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 13, Township 25 North, Range 3 East, W M Lots 13 thru 21, Block 53, Lots 20 thru 24, Block 54, Lots 20 thru 24, Block 68, Lots 10 thru 18, Block 69, Lots 3 thru 11, Block 70, Lot 1, Block 72, Lots 1 thru 8, Block 73, Lots 9 thru 18, Block 74, Lots 17 thru 24, Block 75, and unnumbered triangle, all in the plat of Denny and Hoyt's Addition to the City of Seattle, Vol 2 of Plats, page 136 Lots 6 thru 12, Block 78, Lots 1 thru 7 and Lot 12, Block 79, all in the plat of Denny and Hoyt's Supplemental Plat to the City of Seattle, Volume 3 of Plats, page 3 NE $\frac{1}{4}$ of SW $\frac{1}{4}$ and N $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 13, Township 25 North, Range 3 East, W M Additional legal is on pages 7 through 22 of document	
Assessor's Property Tax Parcel/Account Number	
Tax Parcel/Account Number 197220-4451 and portions of Tax Parcel/Account Numbers 132503-9006 and 132503-9012	
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.	

E2011126

12/30/2003 15.45  
KING COUNTY, WA  
TAX \$2.00  
SALE \$0.00

PAGE001 OF 001



**QUITCLAIM DEED**

(Correction)

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY** (formerly Burlington Northern Railroad Company successor-in-interest to Burlington Northern, Inc), a Delaware corporation, Grantor, for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, conveys and quitclaims, without any covenants of warranty whatsoever and without recourse to the Grantor, its successors and assigns, to **THE CITY OF SEATTLE**, a municipal corporation, of the State of Washington, Grantee, all its right, title and interest, if any, in real estate situated in King County, State of Washington, together with all after acquired title of Grantor therein, described in **EXHIBIT "A"**, consisting of 15 pages and **EXHIBIT "A-1"**, consisting of one page, attached hereto and by this reference made a part hereof.

**EXCEPTING AND RESERVING**, however, unto said Grantor, its successors and assigns, all of the coal, oil, gas, casinghead gas and all ores and minerals of every kind and nature, excluding sand and gravel, underlying the surface of the premises herein conveyed, together with the full right, privilege and license at any and all times to explore, or drill for, by directional drilling or pooling, and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage structures on the surface of the premises herein conveyed; together with the right of access at all times to exercise said rights; provided that exercise of such rights shall not unreasonably interfere with interim trail use; railbanking or restored rail use.

**THIS DEED SUPERSEDES AND REPLACES, AND IS GIVEN TO AMEND THE ORIGINAL LEGAL DESCRIPTION TO THAT CERTAIN QUITCLAIM DEED, DATED JANUARY 26, 1995, BETWEEN BURLINGTON NORTHERN RAILROAD COMPANY, GRANTOR, AND THE CITY OF SEATTLE, WHICH DEED WAS FILED FOR RECORD ON JANUARY 27, 1995 IN THE RECORDS OF THE CLERK AND RECORDER, KING COUNTY, WASHINGTON, AS DOCUMENT NUMBER 9501270808. SAID DEED IS HEREBY CONFIRMED AND RATIFIED.**



**QUITCLAIM DEED**

(Correction)

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY** (formerly Burlington Northern Railroad Company successor-in-interest to Burlington Northern, Inc), a Delaware corporation, Grantor, for Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, conveys and quitclaims, without any covenants of warranty whatsoever and without recourse to the Grantor, its successors and assigns, to **THE CITY OF SEATTLE**, a municipal corporation, of the State of Washington, Grantee, all its right, title and interest, if any, in real estate situated in King County, State of Washington, together with all after acquired title of Grantor therein, described in **EXHIBIT "A"**, consisting of 15 pages and **EXHIBIT "A-1"**, consisting of one page, attached hereto and by this reference made a part hereof.

**EXCEPTING AND RESERVING**, however, unto said Grantor, its successors and assigns, all of the coal, oil, gas, casinghead gas and all ores and minerals of every kind and nature, excluding sand and gravel, underlying the surface of the premises herein conveyed, together with the full right, privilege and license at any and all times to explore, or drill for, by directional drilling or pooling, and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage structures on the surface of the premises herein conveyed; together with the right of access at all times to exercise said rights; provided that exercise of such rights shall not unreasonably interfere with interim trail use; railbanking or restored rail use.

**THIS DEED SUPERSEDES AND REPLACES, AND IS GIVEN TO AMEND THE ORIGINAL LEGAL DESCRIPTION TO THAT CERTAIN QUITCLAIM DEED, DATED JANUARY 26, 1995, BETWEEN BURLINGTON NORTHERN RAILROAD COMPANY, GRANTOR, AND THE CITY OF SEATTLE, WHICH DEED WAS FILED FOR RECORD ON JANUARY 27, 1995 IN THE RECORDS OF THE CLERK AND RECORDER, KING COUNTY, WASHINGTON, AS DOCUMENT NUMBER 9501270808. SAID DEED IS HEREBY CONFIRMED AND RATIFIED.**



INTERSTATE COMMERCE COMMISSION, through its Docket No AB-6 (Sub No 357X). Burlington Northern Railroad Company - Abandonment Exemption - King County, Washington, has issued a Notice of Interim Trail Use, in lieu of a Notice of Exemption for Abandonment, for that right-of-way conveyed hereunder, that the transfer is made pursuant to that Notice of Interim Trail Use, and is further subject to an Interim Trail Use/Railbanking Agreement between Burlington Northern Railroad Company and the City of Seattle, which provides for reconveyance of the right-of-way in the event of the restoration of railroad service.

GRANTEE will indemnify and hold Grantor harmless from any and all liability, cost or expense, including attorney's fees, with respect to the premises arising after the date of Closing or as a result of this sale, including injuries, death, or property loss or damages. Grantee shall protect, hold harmless and indemnify Grantor against any claim or liability arising from or based on the violation of any law, ordinance, regulation, injunction, or final order or decree of bodies or tribunals having any jurisdiction or authority, which in any way affects the performance of this conveyance, whether by Grantee or its employees, agents, or subcontractors. Grantee shall be responsible for defense of any litigation contesting the title of the parties hereto to enter into or effectuate this conveyance under the Act, 16 U.S.C. 1247(d). Excepting reimbursement for the defense of any litigation pending as of Closing, Grantee agrees to pay Grantor its out expenses, including reasonable attorney's fees in the event Grantee does not assume the defense incurred by Grantor in connection with litigation arising out of the transfer or use of the premises covered by this conveyance for interim trail use and railbanking purposes.

GRANTEE warrants to Grantor that the Grantee shall, at its own expense, obtain and maintain in force during the pendency of Trail Use/Railbanking hereunder Commercial General Liability Insurance or comparable self insurance for all claims arising out of bodily injury, illness and death and from damages to or destruction of property of others, including loss or use thereof, and including liability of Grantor, with minimum limits for bodily injury and property damage of \$1,000,000 per occurrence, with an aggregate of \$5,000,000. In the event the real estate is conveyed to a public agency, the public agency may fulfill this obligation through sufficiently funded self-insurance. Evidence of insurance (or certificate of self-insurance) shall be provided to Grantor prior to Closing. In the event of restoration of rail service by Grantee's assignee, the minimum limits shall be increased for the particular line to \$5,000,000 per occurrence, with an aggregate of \$10,000,000 for bodily injury and property damage.

GRANTOR will indemnify and hold Grantee harmless from any and all liability, cost or expense, including attorney's fees, incurred by or assessed against Grantee arising from acts, omissions or incidents with respect to the premises occurring before Closing.

TO the extent allowed by applicable law

(a) Grantor shall indemnify, defend and hold Grantee harmless from all costs, losses, liabilities, obligations and claims that may arise from (i) Grantor's failure to comply with any applicable environmental laws before closing, or, (ii) the release or disposal of any hazardous substance, solid waste or any other environmental contamination on, within or from the premises before Closing.

(b) Grantee shall indemnify, defend, and hold Grantor harmless from all costs, losses, liabilities, obligations and claims of any nature whatsoever that may arise from (i) Grantee's failure to comply with any applicable environmental laws with respect to the premises after Closing, or (ii) the storage, disposal or release of any hazardous substance, solid waste or any other environmental contamination on, within or from the premises after Closing. For purposes of this Paragraph (b), the term "release" does not include any further or continuing release of any hazardous substances or other environmental contamination that was otherwise present on the premises as of Closing.

As used above, the term "environmental laws" means all state, federal or local laws, statutes, ordinances, rules, regulations or orders pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act ("SARA"), the Resource Conservation and Recovery Act of 1976 (and the Washington State Model Toxics Control Act ("MTCA"), as each is amended from time to time. As used herein the terms "hazardous substance" and "release" (except as provided above in Paragraph (b)) have the meaning specified in CERCLA and terms "solid waste" and "disposal" (or "disposed") have the meanings specified in RCRA (except as provided above in Paragraph (b)(ii)). If either CERCLA or RCRA is amended to broaden the meaning of any term defined thereby, the broader meaning shall apply to this conveyance after the effective date of the amendment.

Moreover, to the extent that Washington law establishes a meaning for "hazardous substance", "release", "solid waste", or "disposal" that is broader than that specified in either CERCLA or RCRA, the broader meaning shall apply.

By acceptance of this deed, Grantee acknowledges that a material consideration for this conveyance, without which it would not be made, is the agreement by the Grantee for itself and for its successors and assigns that the Grantor, its predecessors, successors and assigns shall be in no manner responsible to the Grantee, any subsequent owner, purchaser, or any person interested therein for any and all claims, demands, damages, causes of action including loss of access, or suits regarding the quiet and peaceable possession of such premises, title thereto, or condition thereof.

Acquired under the threat of Eminent Domain.

**TO HAVE AND TO HOLD**, the same unto the said Grantee, its successors and assigns, forever.

**IN WITNESS WHEREOF**, the said Grantor caused this instrument to be signed by its authorized representative, attested by its Assistant Secretary, and its corporate seal to be affixed hereto on the 29<sup>th</sup> day of December, 2003

**THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY**

By: *D. P. Schneider*

D. P. Schneider  
General Director Real Estate

**ATTEST:**

By: *Patricia Zbichorski*

Patricia Zbichorski  
Assistant Secretary



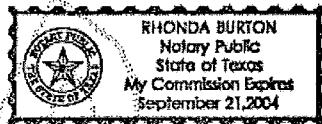
STATE OF TEXAS

COUNTY OF TARRANT

§  
§ ss.  
§

On this 29th day of December, 2003, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared D. P. Schneider and Patricia Zbichorski, to me known to be the General Director Real Estate and Assistant Secretary, respectively, of **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written.



Rhonda Burton  
Notary Public in and for the State of Texas  
Residing at: Carrollton, Texas  
My appointment expires 9/21/2004

**FORM APPROVED BY LAW**

APPROVED LEGAL	<u>KKH</u>
APPROVED FORM	<u>psal</u>
APPROVED	<u>REW</u>



EXHIBIT "A"

To Quitclaim Deed from Burlington Northern Railroad Company  
to the City of Seattle, dated January 25, 1995  
Consisting of 15 Pages

PARCEL A:

All that portion of Burlington Northern Railroad Company's (formerly Northern Pacific Railway Company and Great Northern Railway Company Joint Ownership) 100.0 foot wide right of way in the east half of the southeast quarter of Section 13, Township 25 North, Range 3 East, W.M., in King County, Washington, as conveyed by Thomas Burke and Carrie E. Burke, his wife to the Seattle, Lake Shore and Eastern Railway by deed recorded under King County Recording Number 14678, records of King County, Washington, bounded on the northwest by the produced existing easterly margins of Third Avenue West, bounded on the northeast by the Southwesterly Harbor Line of the Lake Washington Ship Canal as condemned by Decree entered in King County Superior Court Cause Number 21942; EXCEPT that portion lying southwesterly of a line drawn parallel with distant 150 feet southwesterly, as measured at right angles from the Main Track centerline of the Lake Union Branch Line, bounded on the northwest by the easterly margin of Third Avenue West and bounded on the southeast by the westerly margin of 50.0 foot wide Aetna Street, as established by Ordinance No. 15923 of The City of Seattle.

PARCEL B:

Lots 13 through 21, inclusive, Block 53, Denny and Hoyt's Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 136, in King County, Washington;

EXCEPT that portion of said Lots 13 and 14 lying southwesterly of the following described line:

Beginning at a point on the east line of said Lot 14, being 20.50 feet south of the northeast corner thereof;  
thence north  $56^{\circ}49'00''$  west 65.86 feet, more or less, to a point on the north line of said Lot 13, being 4.78 feet east of the northwest corner thereof, and the terminus of said described line;

EXCEPT that portion of said Lots 15, 16, 17 and 18 lying southwesterly of the following described line:

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Beginning at a point on the south line of said Lot 18, being 12.00 feet west of the southeast corner thereof; thence northwesterly, along a straight line, to a point on the west line of said Lot 15, being 71.00 feet north of the southwest corner thereof, and the terminus of said described line;

AND EXCEPT that portion thereof condemned for the Lake Washington Ship Canal by Decree entered in King County Superior Court Cause Number 21942;

PARCEL C:

Lots 20 through 24, inclusive, Block 54, Denny and Hoyt's Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 136, in King County, Washington;

EXCEPT that portion of said Lot 20 lying southwesterly of the following described line:

Beginning at a point on the east line of said Lot 20, being 17.08 feet south of the northeast corner thereof; thence north  $56^{\circ}49'00''$  west 31.30 feet, more or less, to a point on the north line of said Lot 20, and the terminus of said described line;

EXCEPT that portion of said Lots 21, 22, 23 and 24 lying southwesterly of the following described line:

Beginning at a point on the east line of said Lot 24, being 13.00 feet north of the southeast corner thereof; thence northwesterly, along a straight line, to a point on the west line of said Lot 21, being 91.00 feet north of the southwest corner thereof, and the terminus of said described line;

AND EXCEPT that portion thereof condemned for the Lake Washington Ship Canal by Decree entered in King County Superior Court Cause Number 21942;

PARCEL D:

Lots 20 through 24, inclusive, Block 68, Denny and Hoyt's Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 136, in King County, Washington;

EXCEPT that portion of said Lots 20, 21, 22, 23 and 24 lying southwesterly of the following described line:

Beginning at a point on the east line of said Lot 24, being 10.00 feet north of the southeast corner thereof; thence northwesterly, along a straight line, to a point on the west line of said Lot 20, being 13.50 feet south of the northwest corner thereof, and the terminus of said described line;

AND EXCEPT that portion thereof condemned for the Lake Washington Ship Canal by Decree entered in King County Superior Court Cause Number 21942;

PARCEL E:

Lots 10 through 18, inclusive, Block 69, Denny and Hoyt's Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 136, in King County, Washington;

EXCEPT that portion of said Lots 10, 11, 12, 13, 14, 15 and 16 lying southwesterly of a line parallel with and 8.50 feet southwesterly of the centerline of the Burlington Northern Seattle Belt Line (Lake Union Line) main railroad track centerline;

AND EXCEPT that portion thereof condemned for the Lake Washington Ship Canal by Decree entered in King County Superior Court Cause Number 21942;

PARCEL F:

Lots 3 through 11, inclusive, Block 70, Denny and Hoyt's Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 136, in King County, Washington;

EXCEPT that portion of said Lots 3, 4, 5, 6, 7 and 8 lying southwesterly of the following described line:

Beginning at the southeast corner of said Lot 8;  
thence northwesterly, along a straight line, to a point on the west  
line of said Lot 3; being 2.05 feet south of the northwest corner  
thereof, and the terminus of said described line;

AND EXCEPT that portion thereof condemned for the Lake Washington  
Ship Canal by Decree entered in King County Superior Court Cause  
Number 21942;

PARCEL G:

Lot 1, Block 72, Denny and Hoyt's Addition to the City of Seattle,  
according to the plat thereof recorded in Volume 2 of Plats,  
page 136, in King County, Washington;

EXCEPT that portion thereof condemned for the Lake Washington Ship  
Canal by Decree entered in King County Superior Court Cause Number  
21942;

PARCEL H:

Lots 1 through 8, inclusive, Block 73, Denny and Hoyt's Addition to  
the City of Seattle, according to the plat thereof recorded in  
Volume 2 of Plats, page 136, in King County, Washington;

EXCEPT that portion of said Lots 1, 2, 3, 4 and 5 lying  
southwesterly of the following described line:

Beginning at a point on the south line of said Lot 5, being 148.00  
feet east of the southwest corner of said Block 73;  
thence northwesterly, along a straight line, to a point on the west  
line of said Lot 1, being 21.00 feet south of the northwest corner  
thereof, and the terminus of said described line;

AND EXCEPT that portion thereof condemned for the Lake Washington  
Ship Canal by Decree entered in King County Superior Court Cause  
Number 21942;

PARCEL I:

Lots 9 through 18, inclusive, Block 74, Denny and Hoyt's Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 136, in King County, Washington;

EXCEPT that portion of said Lot 9 lying southwesterly of the following described line:

Beginning at a point on the west line of Block 73 of said Addition, being 99.00 feet north of the southwest corner thereof; thence southeasterly, along a straight line, to a point on the south line of said Block 73, being 148.00 feet east of the southwest corner thereof; thence continuing along said straight line, southeasterly to a point on the east line of said Lot 9, and the terminus of said described line;

EXCEPT that portion of said Lots 10, 11, 12, 13, 14 and 15 lying southwesterly of the following described line:

Beginning at a point on the south line of said Lot 15, being 160.00 feet east of the southwest corner of said Lot 10; thence northwesterly, along a straight line, to a point on the west line of said Lot 10, being 100.00 feet north of the southwest corner thereof, and the terminus of said described line;

AND EXCEPT that portion thereof condemned for the Lake Washington Ship Canal by Decree entered in King County Superior Court Cause Number 21942;

PARCEL J:

Lots 17 through 24, inclusive, Block 75, Denny and Hoyt's Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 136, in King County, Washington;

EXCEPT that portion of said Lots 17, 18, 19, 20, 21 and 22 lying southwesterly of the following described line:

Beginning at a point on the south line of said Lot 22, being 0.20 feet east of the southwest corner thereof; thence northwesterly, along a straight line, to a point on the west line of said Lot 17, being 15.00 feet south of the northwest corner thereof, and the terminus of said described line;

AND EXCEPT that portion thereof condemned for the Lake Washington Ship Canal by Decree entered in King County Superior Court Cause Number 21942;

PARCEL K:

Lots 6 through 12, inclusive, Block 78, Denny and Hoyt's Supplemental Plat to the City of Seattle, according to the plat thereof recorded in Volume 3 of Plats, page 3, in King County, Washington;

EXCEPT that portion of said Lots 6 and 7 lying southwesterly of the following described line:

Beginning at a point on the east line of said Lot 7, being 40.00 feet, more or less, south of the northeast corner thereof; thence northwesterly to a point on the east line of said Lot 6, being 20.00 feet, more or less, south of the northeast corner thereof; thence northwesterly to the northwest corner of said Lot 6, and the terminus of said described line;

EXCEPT that portion of said Lots 8, 9 and 10 lying southwesterly of the following described line:

Beginning at a point on the south line of said Lot 8, being 90.00 feet east of the southwest corner thereof; thence northwesterly, along a straight line, to the northwest corner of said Lot 10, and the terminus of said described line;

AND EXCEPT that portion thereof condemned for the Lake Washington Ship Canal by Decree entered in King County Superior Court Cause Number 21942;



PARCEL L:

Lots 1 through 7, inclusive, and Lot 12, Block 79, Denny and Hoyt's Supplemental Plat to the City of Seattle, according to the plat thereof recorded in Volume 3 of Plats, page 3, in King County, Washington;

EXCEPT that portion of said Lots 1, 2, 3 and 4 lying southwesterly of the following described line:

Beginning at a point on the south line of said Lot 4, being 5.00 feet west of the southeast corner thereof; thence northwesterly, along a straight line, to a point on the west line of said Lot 1, being 80.00 feet north of the southwest corner thereof, and the terminus of said line description;

EXCEPT that portion of said Lots 1, 2, 3, 4, 5 and 6 described as follows:

Beginning at a point on the west line of said Lot 1, being 80.00 feet north of the southwest corner thereof; thence north, along said west line, 31.46 feet to a line parallel with and distant 15.00 feet southwesterly of, measured at right angles to, the main track centerline of the existing railroad track; thence south  $56^{\circ}58'28''$  east, along said parallel line, 186.24 feet to the south line of said Block 79; thence south  $89^{\circ}57'17''$  west, along said south line, 56.09 feet; thence north  $57^{\circ}12'22''$  west 140.04 feet to the Point of Beginning;

AND EXCEPT that portion thereof condemned for the Lake Washington Ship Canal by Decree entered in King County Superior Court Cause Number 21942;

PARCEL M:

That certain un-numbered triangle in Denny and Hoyt's Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 136, in King County, Washington, lying southwesterly of the Lake Washington Ship Canal as condemned by Decree entered in King County Superior Court Cause Number 21942 and bounded on the south by Bertona Street and on the west by Queen Anne Avenue  
BN 1131 Seattle, WA (correction qcd)

PARCEL N:

All that portion of Burlington Northern Railroad Company's (formerly Northern Pacific Railway Company and Great Northern Railway Company Joint Ownership) Lake Union Branch Line right of way, now discontinued, varying in width on each side of said Railroad Company's Main Track centerline, as originally located and constructed in the City of Seattle, King County, State of Washington, described as follows:

A 21.0 foot wide strip of land, being 10.0 feet wide on the northerly side and 11.0 feet wide on the southerly side of said Main Track centerline as originally located and constructed upon, over and across the northeast quarter of the southwest quarter and the north half of the southeast quarter of Section 13, Township 25 North, Range 3 East, W.M., in King County, Washington, bounded on the southeast by the westerly margin of Third Avenue West and bounded on the northwest by a line drawn parallel with and distant 50.0 feet westerly of the production north of the northwesterly margin of Eighth Avenue West, according to the recorded plat of Ross Second Addition to the City of Seattle, as recorded in Volume 2 of Plats, page 140, in King County, Washington;

EXCEPTING THEREFROM that portion lying within the limits of 66.0 foot wide Eighth Avenue West, as established by easement conveyed under Recording Number 7910110594, records of King County, Washington, and accepted by Ordinance Number 108782 of the City of Seattle;

AND EXCEPT any portion thereof which may lay within land being leased from Burlington Northern Railroad Company;

AND

All that portion of said Railroad Company's 100.0 foot wide Branch Line right-of-way, being 50.0 feet wide on each side of said Main Track centerline upon, over and across the northwest quarter of the southeast quarter of said Section 13, Township 25 North, Range 3 East, W.M., in King County, Washington, lying east of the produced existing west margins of Third Avenue West;

AND

All that portion of said Railroad Company's 100.0 foot Branch Line right-of-way, being 50.0 feet wide on each side of said Main Track centerline upon, over and across the northeast quarter of the southeast quarter of said Section 13, Township 25 North, Range 3 East, W.M., in King County, Washington, lying west of the produced existing east margins of Third Avenue West.

PARCEL Q:

That portion of the alley between Blocks 72 and 73, Denny and Hoyt's Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 136, in King County, Washington, vacated by City of Seattle Ordinance No. 12830, and lying southwesterly of the Southwesterly Harbor Line of the Lake Washington Ship Canal as condemned by Decree entered in King County Superior Court Cause Number 21942; and

That portion of West Dravus Street, vacated by City of Seattle Ordinance Number 87007, lying between Blocks 73 and 74, Denny and Hoyt's Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 136, in King County, Washington, lying southwesterly of the Southwesterly Harbor Line of the Lake Washington Ship Canal as condemned by Decree entered in King County Superior Court Cause Number 21942, and lying northeasterly of an easterly production of a line extending through points in the west and south lines of Block 73 of said addition, distant respectively 99 feet northerly and 148 feet easterly, measured along said west and south lines from the southwest corner of said Block 73.

**PARCEL P.**

All that portion of said Railroad Company's 300 foot wide Lake Union Branch Line right of way upon, over and across Section 13, Township 25 North, Range 3 East and Sections 18, 19, 30 and 29 in Township 25 North, Range 4 East of the Willamette Meridian, said right of way being a Franchise from the City of Seattle, King County, Washington as established by Ordinance No. 22817 of The City of Seattle and amended by Ordinance No. 43544 of The City of Seattle, granting to the Northern Pacific Railway Company, a corporation organized under the laws of the State of Wisconsin, its successors and assigns (now succeeded by Burlington Northern Railroad) and to the joint owners thereafter acquiring an interest in said franchise in the provisions thereof, the right, privilege and authority to locate, lay down, construct, maintain and operate in perpetuity, sundry railway tracks in, along, upon and across sundry streets, avenues, alleys and other public places, and upon other property, all within the limits of said city, and granting said company, its successors and assigns, rights of way for such track in, along, upon and across such streets, avenues, alleys and other public places and property of and in said city, the center line of said 300 foot wide right of way being described as follows

Beginning at a point in the center line of the present main track of the Northern Pacific Railway, which point is seventy-four and nine-tenths (74.9) feet easterly from the intersection of the center line of said track with the easterly line of Third Ave West produced north, being measured south seventy-one degrees thirty-one minutes and forty-four seconds east (S 71°31'44" E) along the center line of said main track, thence along the arc of a curve to the right having a radius of fourteen hundred thirty-two and sixty-nine hundredths (1432.69) feet through an angle of fourteen degrees forty-two minutes and forty-four seconds (14°42'44") a distance of three hundred sixty-seven and eighty-eight hundredths (367.88) feet to a point of tangency, thence along said tangent south fifty-six degrees forty-nine minutes east (S 56°49' E) a distance of twenty five hundred fifty-five and forty-nine hundredths (2555.49) feet to a point of curvature to the right, said tangent in its course intersecting the north line of Lot Fourteen (14), Block Fifty-three (53), of Denny & Hoyt's Addition at a point eight and six-tenths (8.6) feet westerly from the northeast corner of said Lot Fourteen (14), which point is also in the southerly line of the right of way of said Northern Pacific Railway, also said tangent in its course intersecting the west line of Lot Seven (7), Block Seventy-nine (79) of Denny & Hoyt's Addition at a point twelve and eighteen hundredths (12.18) feet north of the southwest corner of said Lot Seven (7), thence along the arc of a curve to the right having a radius of five hundred seventy-three and sixty-nine hundredths (573.69) feet through an angle of twenty-six degrees two minutes and forty-three seconds (26°02'43") a distance of two hundred sixty and seventy-eight hundredths (260.78) feet and to a point of tangency with a line parallel to and thirty-six and five-tenths (36.5) feet southwesterly from, measured at right angles to, the southwesterly line of Block Ninety-seven (97), Lake Union Shore Lands, thence along said tangent south thirty degrees forty-six minutes and seventeen seconds east (S 30°46'17" E) a distance

of one hundred seventy-three and fifty-five hundredths (173.55) feet to a point as near as may be twenty-four and seventy-three hundredths (24.73) feet southeasterly, measured along said tangent, from the intersection of the northwesterly line of Lot Three (3), Block Ninety-seven (97), Lake Union Shore Lands produced southwesterly, thence along the arc of a curve to the left having a radius of five hundred seventy-three and sixty-nine hundredths (573.69) feet, through an angle of twenty-six degrees two minutes and forty-three seconds (26°2'43") a distance of two hundred sixty and seventy-eight hundredths (260.78) feet to a point of tangency with a line fifteen (15) feet southerly from, measured at right angles to the southerly line of Block Ninety-seven (97), Lake Union Shore Lands, thence south fifty-six degrees forty-nine minutes east (S 56°49' E) ten hundred fifty-nine and fifty-two hundredths (1059.52) feet and parallel to the southerly line of Lots One (1) to Eight (8), both inclusive, in Block Ninety-six (96) of Lake Union Shore Lands, and to a point of curvature, as nearly as may be at the intersection of said tangent with the line between Lots Eighteen (18) and Nineteen (19), Block Ninety-six (96) of Lake Union Shore Lands produced southerly, thence along the arc of a curve to the right having a radius of seven hundred sixteen and seventy-eight hundredths (716.78) feet through an angle of twenty-six degrees forty-four minutes and forty and five-tenths seconds (26°44'40.5") a distance of three hundred thirty-four and fifty-eight hundredths (334.58) feet, and to a point of tangency with a line fifteen (15) feet from, measured at right angles to the southwesterly line of Lots Twenty-six (26) through Thirty-two (32), both inclusive, in Block Ninety-six (96) of Lake Union Shore Lands, thence south thirty degrees four minutes and nineteen and five-tenths seconds east (S 30°4'19.5" E) three hundred seventy-one and five-tenths (371.5) feet to a point of curvature located as near as may be, twelve and thirty-seven hundredths (12.37) feet southeasterly from the intersection of said tangent with a line between Lots Thirty-two (32) and Thirty-three (33), said Block Ninety-six (96) produced southwesterly, said distance being measured along said tangent, thence along the arc of a curve to the right having a radius of nineteen hundred ten and eight hundredths (1910.08) feet through an angle of six degrees fifty-one minutes (6°51') a distance of two hundred twenty-eight and thirty-six hundredths (228.36) feet and to a point of tangency with a line fifteen (15) feet westerly from, measured at right angles to, the westerly line of Block Ninety-five (95), Lake Union Shore Lands, thence south twenty-three degrees thirteen minutes nineteen and six-tenths seconds east (S 23°13'19.6" E) nine hundred thirty-five and forty-six hundredths (935.46) feet, parallel to and fifteen (15) feet westerly from, measured at right angles to, the westerly line of said Block Ninety-five (95), to a point of curvature, said point being, as near as may be, fifty-six and thirty-six hundredths (56.36) feet southeasterly from the intersection of said tangent with the line between Lots Fifteen (15) and Sixteen (16), in said Block Ninety-five (95) produced westerly, said distance being measured along said tangent, thence along the arc of a curve to the right having a radius of fifty-seven hundred twenty-nine and sixty-five hundredths (5729.65) feet, through an angle of two degrees forty-two minutes and nineteen and six-tenths seconds (2°42'19.6") two hundred seventy and fifty-four

hundredths (270.34) feet and to a point of tangency with a line fifteen (15) feet westerly from, measured at right angles to the westerly line of Block Ninety-four (94), Lake Union Shore Lands, thence south twenty degrees thirty-one minutes east (S 20°31' E) four hundred fifty-eight and thirty-three hundredths (458.33) feet parallel to and fifteen (15) feet westerly from, measured at right angles to, the westerly line of said Block Ninety-four (94), to a point of curvature, said point bearing south sixty-nine degrees twenty-nine minutes west (S 69°29' W) fifteen (15) feet and south twenty degrees thirty-one minutes east (S 20°31' E) forty-eight and eighty-eight hundredths (48.88) feet from the southwest corner of said Block Ninety-four (94) of Lake Union Shore Lands, thence along the arc of a curve to the right having a radius of twelve hundred forty-one and seventy-three hundredths (1241.73) feet, through an angle of nineteen degrees fifty-eight minutes and eighteen seconds (19°58'18") four hundred thirty-two and eighty-three hundredths (432.83) feet and to a point of tangency, which point of tangency is north no degrees thirty-two minutes forty-two seconds west (N 00°32'42" W) twenty-five and ninety-six hundredths (25.96) feet and south eighty-nine degrees twenty-seven minutes and eighteen seconds west (S 89°27'18" W) fifteen (15) feet from the southwest corner of Lot Fourteen (14), Block Ninety-three (93), Lake Union Shore Lands, thence south no degrees thirty-two minutes and forty-two seconds east (S 00°32'42" E) nine hundred seventy-nine and seventy-six hundredths (979.76) feet parallel to and fifteen (15) feet westerly from, measured at right angles to, the westerly line of Lots Fifteen (15) to Thirty-two (32), both inclusive, in said Block Ninety-three (93), and to a point of curvature, said point being south no degrees thirty-two minutes and forty-two seconds east (S 00°32'42" E) three and forty-six hundredths (3.46) feet and south eighty-nine degrees twenty-seven minutes and eighteen seconds west (S 89°27'18" W) fifteen (15) feet from the northwest corner of Lot Four (4), Block Ninety-two (92), Lake Union Shore Lands, thence along the arc of a curve to the right having a radius of ten hundred seventy-five (1075.00) feet through an angle of fourteen degrees ten minutes and eleven seconds (14°10'11") a distance of two hundred sixty-five and eighty-six hundredths (265.86) feet and to a point of tangency fifteen (15) feet westerly from, measured at right angles to, the westerly line of Lots Eleven (11) through Fifteen (15), both inclusive, Block Ninety-two (92), Lake Union Shore Lands, thence southerly, parallel to and fifteen (15) feet westerly from the westerly line of said Lots Eleven (11) through Fifteen (15), both inclusive, last aforesaid, three hundred forty-one and twenty-seven hundredths (341.27) feet and to a point of curvature, said point being fifteen (15) feet westerly from, when measured at right angles to said tangent, a point in the westerly line of Lot Sixteen (16), Block Ninety-two (92), Lake Union Shore Lands, said last described point being forty-one and sixty-seven hundredths (41.67) feet southerly from the northwest corner of said Lot Sixteen (16) measured southerly along the westerly line thereof, thence along the arc of a curve to the left having a radius of nine hundred fifty-five (955.00) feet, through an angle of thirteen degrees seventeen minutes and forty-four seconds (13°17'44") two hundred twenty-one and sixty-one hundredths (221.61) feet, parallel to the westerly line of Lot Seventeen (17), Block Ninety-two (92) and



Lot One (1), Block Ninety-one (91), both in Lake Union Shore Lands, and to a point of tangency with a line parallel to and fifteen (15) feet westerly from, measured at right angles to, the westerly line of Blocks Eighty-eight (88), Eighty-nine (89) and Ninety (90) of Lake Union Shore Lands, thence south no degrees nineteen minutes and forty-four and nine-tenths seconds west (S 00°19'44.9" W) eight hundred eighty-nine and thirty hundredths (889.30) feet parallel with and fifteen (15) feet westerly from, measured at right angles to the westerly line of Block Eighty-eight (88) and Eighty-nine (89) and Ninety (90) last aforesaid, to a point of curvature, said point being south no degrees nineteen minutes forty-four and nine-tenths seconds west (S 00°19'44.9" W) five and eleven hundredths (5.11) feet and north eighty-nine degrees forty minutes and fifteen and one-tenth seconds west (N 89°40'15.1" W) fifteen (15) feet from the northwest corner of Block 84, Lake Union Shore Lands, thence along the arc of a curve to the left having a radius of six hundred sixty-five (665.00) feet, through an angle of twenty-six degrees fourteen minutes and thirty-four and four-tenths seconds (26°14'34.4") three hundred four and fifty-nine hundredths (304.59) feet and to a point of tangency with a line fifteen (15) feet westerly from, measured at right angles to, the westerly line common to Blocks Eighty-three (83) and Eighty-four (84), Lake Union Shore Lands, thence south twenty-five degrees fifty-four minutes forty-nine and five-tenths seconds (S 25°54'49.5" E) nine hundred twenty-five and ninety-eight hundredths (925.98) feet parallel to and fifteen (15) feet westerly from, measured at right angles to the westerly line common to said Blocks Eighty-three (83) and Eighty-four (84), to a point of curvature, which point is six hundred eighteen and five hundred thirty-five thousandths (618.535) feet south and sixteen and nine hundred sixteen thousandths (16.916) feet east from the northeast corner of said Block Eighty-three (83), thence along the arc of a curve to the left having a radius of three hundred forty-three and two hundred eighty-six thousandths (343.286) feet, through an angle of sixty-three degrees forty-seven minutes thirty-two and five-tenths seconds (63°47'32.5") three hundred eighty-two and twenty-one hundredths (382.21) feet, and to a point of tangency with a line parallel to and twenty-five (25) feet southerly from, measured at right angles to the southerly line of Lot One (1), Block Seventy-four (74), Lake Union Shore Lands, said point being three hundred fifteen and two-tenths (315.2) feet west from and twenty-three and three hundred eighty-five thousandths (23.385) feet south from the southeast corner of Lot One (1), Block Seventy-four (74), last aforesaid, thence south eighty-nine degrees forty-two minutes twenty-two seconds east (S 89°42'22" E) four hundred eighty and sixteen hundredths (480.16) feet, parallel to and twenty-five (25) feet southerly from, measured at right angles to the southerly line of said Lot One (1), Block Seventy-four (74), and said line produced, and to a point of curvature, thence along a curve to the left having a radius of three hundred nineteen and sixty-two hundredths (319.62) feet, through an angle of forty-nine degrees thirty-six minutes eleven and six-tenths seconds (49°36'11.6") two hundred seventy-six and seventy-one hundredths (276.71) feet, and to a point of tangency with a line fifteen (15) feet southerly from, measured at right angles to the

southerly line of Blocks Sixty-seven (67), Sixty-nine (69), Seventy (70) and Seventy-one (71), of Lake Union Shore Lands, and said line produced, thence along said tangent north forty degrees forty-one minutes twenty-six and four-tenths seconds east (N 40°41'26.4" E) ten hundred sixty-nine and five-tenths (1069.5) feet and there terminating, also

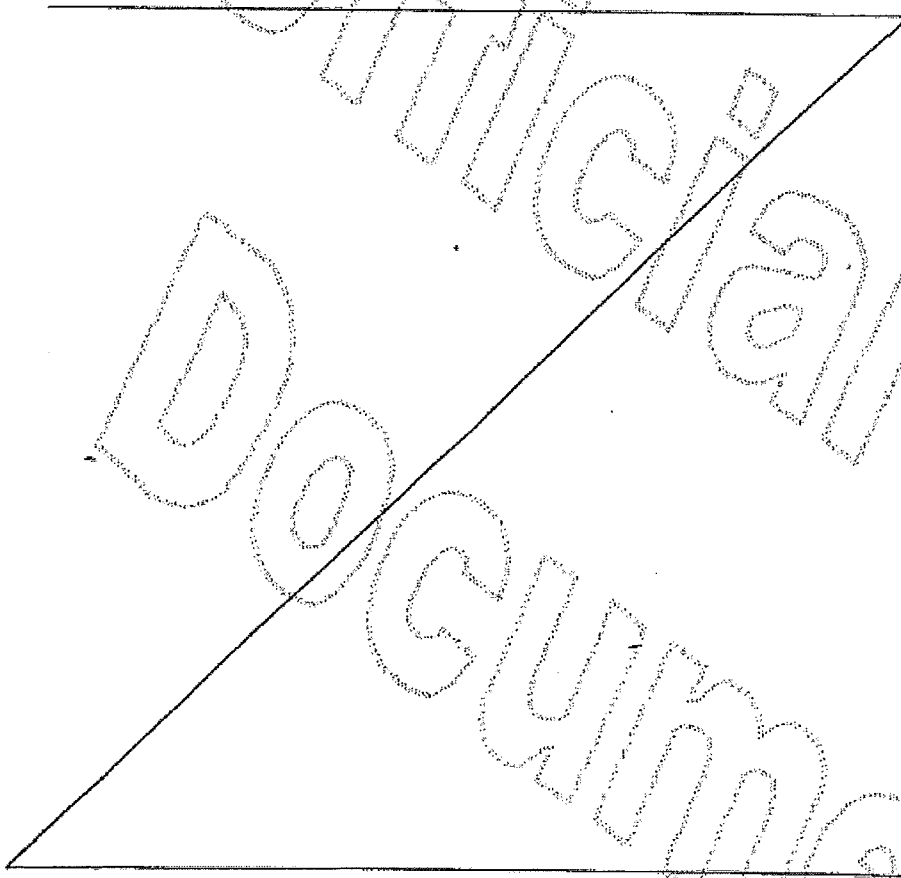
All that portion of Burlington Northern Railroad Company's (formerly Northern Pacific Railway Company and Great Northern Railway Company Joint Ownership) Terry Avenue Branch Line right of way, now discontinued, within the limits of Terry Avenue North in the David T Denny Donation Land Claim No. 38 and in the NE1/4 of Section 30, Township 25 North, Range 4 East, of the Willamette Meridian, said right of way being a Franchise from the City of Seattle, King County, Washington as established by Ordinance No. 22818 of the City of Seattle and as amended by Ordinance No. 43543 of the City of Seattle, bounded on the North by the Government Harbor Line of Lake Union at the North end of Terry Avenue North and bounded on the South by the produced North margins of Denny Way, as established in the plat of D T Denny's 5th Addition to North Seattle, as recorded in Volume 1 of Plats, page 202, Records of King County, Washington, and as established in the plat of Gangloff's Addition to the City of Seattle, as recorded in Volume 3 of Plats, page 30, Records of King County, Washington, also

An additional 170 foot wide strip of land lying adjacent to and Easterly of the hereinabove described 300 foot wide Terry Avenue Branch Line right of way, being 85 feet on each side of said Railroad Company's Spur Track centerline, said 170 foot wide right of way being a Franchise from the City of Seattle, King County, Washington by Permit Application No. 11303 as authorized by Ordinance No. 22818 of the City of Seattle, bounded on the South by the produced North margins of Thomas Street and bounded on the North by said Spur Track centerline's junction with said Branch Line centerline, said junction lying northerly 222.4 feet, more or less, from the intersection of said Spur Line centerline with the produced South margins of Harrison Street, as measured along said Spur Line centerline, **EXCEPTING THEREFROM** all that portion of said Spur Line right of way lying within the right of way of said Branch Line, also

All that portion of said Railroad Company's 300 foot wide Southwest Leg Wye Track right of way, connecting the hereinabove described Lake Union Branch Line right of way with the hereinabove described Terry Avenue Branch Line right of way, said right of way being a Franchise from the City of Seattle, King County, Washington as established by Ordinance No. 43544 of the City of Seattle, **EXCEPTING THEREFROM**, all that portion of said 300 foot wide Southwest Leg Wye Track right of way lying within Block 77 of D T Denny's First Addition to North Seattle, also

All that portion of said Railroad Company's 300 foot wide Southeast Leg Wye Track right of way, connecting the hereinabove described Lake Union Branch Line right of way with the hereinabove described Terry Avenue Branch Line right of way, said right of way being a Franchise from the City of Seattle, King County, Washington as established by Ordinance No. 43543 of the City of Seattle, **EXCEPTING THEREFROM**, all that portion of said 300 foot wide Southeast Leg Wye Track right of way lying within Block 76 of D T Denny's First Addition to North Seattle, also

All that portion of said Railroad Company's 300 foot wide Northeast Leg Wye Track right of way, connecting the hereinabove described Lake Union Branch Line right of way with the hereinabove described Terry Avenue Branch Line right of way, said right of way being a Franchise from the City of Seattle, King County, Washington as established by Ordinance No 43543 of the City of Seattle, lying within the limits of Terry Avenue



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**EXHIBIT "A-1"**

**Parcel A  
(Correction Deed)**

THE NORTHEASTERLY 8.5 FEET OF THE SOUTHWESTERLY 39.0 FEET OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S ORIGINAL 100-FOOT WIDE LAKE UNION LINE RIGHT-OF-WAY (FORMERLY SEATTLE, LAKE SHORE AND EASTERN RAILWAY COMPANY RIGHT-OF-WAY), BEING 50.0 FEET WIDE ON EACH SIDE OF SAID RAILWAY COMPANY'S MAIN TRACK CENTERLINE, AS ORIGINALLY LOCATED AND CONSTRUCTED UPON, OVER AND ACROSS GOVERNMENT LOTS 3 AND 5 AND THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING BETWEEN 2 LINES DRAWN PARALLEL OR CONCENTRIC WITH AND DISTANT, RESPECTIVELY, 11.0 FEET AND 19.5 FEET SOUTHWESTERLY, AS MEASURED AT RIGHT ANGLES OR RADIAL FROM SAID MAIN TRACK CENTERLINE, AND BOUNDED ON THE SOUTHEAST BY THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF LOT 20 IN BLOCK 22 ACCORDING TO THE RECORDED PLAT OF ROSS ADDITION TO SEATTLE, RECORDED IN VOLUME 2 OF PLATS, PAGE 96, AND BOUNDED ON THE NORTHWEST BY THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF LOT 25, BLOCK 22, ACCORDING TO SAID RECORDED PLAT OF ROSS ADDITION TO SEATTLE.

CONTAINING 2,049 SQUARE FEET, MORE OR LESS.



20010927002918

PAGE 1 OF 11 ERSET 18.00  
09/27/2001 15:47  
KING COUNTY, WA

RETURN TO

CITY OF SEATTLE  
ATTENTION: STUART GOLDSMITH  
600 FOURTH AVE., 4TH FLOOR  
SEATTLE, WA 98104

E1844071

09/27/2001 15:23  
KING COUNTY, WA  
TAX \$1,889.12  
SALE \$50,400.00

PAGE 001 OF 001

COVER SHEET - INDEXING FORM

PACIFIC NORTHWEST TITLE

Document Title(s)

PACIFIC NORTHWEST TITLE COMPANY

EASEMENT AGREEMENT

Reference # (if applicable)

Additional on Page

Grantor/Borrower

ARGONAUT PROPERTIES, INC.

Additional on Page

Grantee/Beneficiary

CITY OF SEATTLE

SAID DOCUMENT(S) HAVE BEEN  
RECORDED BY PACIFIC NORTHWEST TITLE  
COMPANY FOR INFORMATION ONLY. IT HAS NOT BEEN  
EXAMINED AS TO PROPER EXECUTION.

Additional on Page

Legal Description

GOV LOT 3, 13-25-3

Additional on Page

Assessor's Tax Parcel ID#

132503-9011-01;9006-08;277060-5642-04

ATTACHMENT 2



3. Duration of Easement. The Trail Easement shall be perpetual and shall inure to the benefit of the City and the public, and shall be binding upon Grantor and its successors, assigns, mortgagees, lessees, and sublessees

4. Title Grantor warrants that no rights have been granted by Grantor to any person or entity that would have priority over this Agreement and the rights granted to the City hereunder, and Grantor further warrants that no liens against the Property have been created or will be created by, through or as a result of actions or contracts of Grantor that would have priority over this Agreement and the rights granted to the City hereunder

5. Indemnities Grantor shall indemnify, defend and hold the City harmless from and against all claims and all costs, expenses and liabilities (including reasonable attorney fees) as a result of the death of, or any accident, injury, loss or damage whatsoever caused to, any natural person or the property of any person arising out of the negligence of Grantor, and the City shall indemnify, defend and hold Grantor harmless from and against all claims and all costs, expenses and liabilities (including reasonable attorney fees) as a result of the death of, or any accident, injury, loss or damage whatsoever caused to, any natural person or the property of any person arising out of the negligence of the City, it being the intent of the parties that each shall be responsible for its own negligence and, in the case of joint negligence each shall have such right of contribution as is provided by law,

6. Ownership of Improvements All structures (including ramps and bridges), facilities, utilities, equipment, landscaping materials, plantings or improvements of any kind that are acquired, constructed or installed in, upon, under, across or over the Trail Easement Area by the City, at the City's cost and expense or for the benefit of the City shall be and remain the property of the City

7. Maintenance. The City at its cost shall maintain the Trail Easement Area

8. Notices Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt requested, postage prepaid, addressed as follows:

To Grantor:

Argonaut Properties, Inc  
20420 - 56<sup>th</sup> Avenue West, Suite 110  
Lynnwood, WA 98036-7627  
Attention: Scott Thompson

To City

Seattle Transportation  
600 Fourth Avenue, 4th Floor  
Seattle, WA 98104  
Attention: Director of Seattle Transportation



with a copy to

Department of Parks and Recreation  
800 Maynard Avenue South  
Seattle, WA 98134  
Attention: Real Property Manager

or to such other address as either party from time to time shall designate by written notice to the other. Notice shall be effective upon actual receipt, if personally delivered, or, if mailed, upon the earlier of actual receipt or three (3) days after deposit in the U S mail

9 General Provisions

(a) Controlling Law The interpretation and performance of this Agreement shall be governed by the laws of the State of Washington.

(b) Severability If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby

(c) Entire Agreement This instrument together with surviving provisions of the Real Estate Purchase and Sale Agreement fully executed as of August 3, 2001 between Grantor and the City set forth the entire agreement of the parties with respect to the Trail Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to the Trail Easement, all of which are merged herein

(d) Successors The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, Grantor and the City and their respective successors and assigns and shall continue as a servitude running in perpetuity with the Property

(e) Termination of Rights and Obligations A party's rights and obligations under this Agreement terminate upon transfer of the party's interest in the Trail Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer

(f) Waiver The waiver by either party of the breach of any term set forth herein shall not be deemed to be a waiver of any subsequent breach of the same term or any other term

(g) Captions The captions in this Agreement have been inserted solely for convenience of reference and are not a part of this Agreement and shall have no effect upon

construction or interpretation

IN WITNESS WHEREOF Grantor and the City have set their hands on the day and year first above written

**GRANTOR:**

ARGONAUT PROPERTIES, INC.,  
a Washington corporation

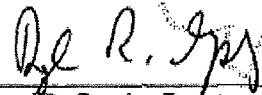
By

  
Scott Thompson, President

**THE CITY:**

THE CITY OF SEATTLE, a municipal  
corporation

By

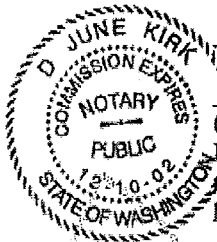
  
Daryl R. Grigsby, Director of  
Seattle Transportation

**SCHEDULE OF EXHIBITS**

- A Legal Description of Grantor's Property
- B Legal Description of Trail Easement Area and Permitted Exceptions

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

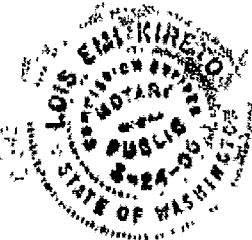
On this 27 day of September, 2001, before me, personally appeared Scott Thompson, known to me (or proved to me on the basis of satisfactory evidence) to be the President of ARGONAUT PROPERTIES, INC, the Washington corporation named in and which executed the foregoing document, and stated on oath that he was authorized to execute the foregoing document on behalf of said corporation and signed the same as the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned.



D. June Kirk  
D. JUNE KIRK  
(typed or printed name)  
NOTARY PUBLIC in and for the State of Washington,  
residing at Seattle  
My commission expires: 12-10-02

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

On this 5<sup>th</sup> day of September, 2001, before me, personally appeared Daryl R. Grigsby, known to me (or proved to me on the basis of satisfactory evidence) to be the Director of Seattle Transportation of THE CITY OF SEATTLE, the municipal corporation named in and which executed the foregoing document, and stated on oath that he was authorized to execute the foregoing document on behalf of said municipal corporation and signed the same as the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned.



Lois E. Kireto  
LOIS E. KIRETO  
(typed or printed name)  
NOTARY PUBLIC in and for the State of Washington,  
residing at Seattle, WA  
My commission expires: 3/24/2005

**EXHIBIT A TO EASEMENT AGREEMENT  
LEGAL DESCRIPTION OF GRANTOR'S PROPERTY**

**PARCEL B**

THE NORTHERLY 20.00 FEET OF LOTS 3 AND 4, BLOCK 47, AND THE NORTHERLY 20.00 FEET OF LOTS 1, 2, 3 AND 4, BLOCK 52, ALL IN GILMAN'S ADDITION TO THE CITY OF SEATTLE AS PER VOLUME 5 OF PLATS, PAGE 93, RECORDS OF KING COUNTY, WASHINGTON, AND THE NORTHERLY 20.00 FEET OF THAT PORTION OF VACATED 12TH AVE WEST LYING BETWEEN SAID BLOCKS 47 AND 52 AS VACATED BY CITY OF SEATTLE ORDINANCE NO 18078

TOGETHER WITH THOSE PORTIONS OF LOTS 1 AND 2, BLOCK 47 OF SAID GILMAN'S ADDITION, AND OF THAT PORTION OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY LAKE UNION LINE RIGHT OF WAY LYING EAST OF THE WEST LINE OF GOVERNMENT LOT 3, SECTION 13, TOWNSHIP 25 NORTH, RANGE 3 EAST, WM, KING COUNTY, WASHINGTON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF W EWING PLACE WITH THE WEST LINE OF SAID GOVERNMENT LOT 3; THENCE NORTH 00°01'58" EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 3 FOR A DISTANCE OF 46.73 FEET TO THE POINT OF BEGINNING, THENCE NORTHWESTERLY ALONG A CURVE TO THE LEFT HAVING A RADIAL BEARING OF SOUTH 31°02'43" WEST, A CENTRAL ANGLE OF 06°44'24" AND A RADIUS OF 910.37 FEET, FOR A DISTANCE OF 107.09 FEET TO THE WEST LINE OF LOT 2, BLOCK 47, THENCE NORTH 00°12'01" WEST 21.93 FEET TO THE NORTHWEST CORNER OF SAID LOT 2; THENCE SOUTHEASTERLY ALONG THE NORTH LINE OF SAID LOT 2, ALONG A CURVE TO THE RIGHT, HAVING A RADIAL BEARING OF SOUTH 23°44'43" WEST, A CENTRAL ANGLE OF 01°25'20", AND A RADIUS OF 930.37, FOR A DISTANCE OF 23.09 FEET; THENCE SOUTH 61°52'35" EAST 83.74 FEET; THENCE SOUTH 59°31'29" EAST 86.31 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF W EWING PLACE; THENCE SOUTH 89°34'02" WEST ALONG SAID RIGHT OF WAY LINE 49.48 FEET; THENCE NORTHWESTERLY ALONG A CURVE TO THE LEFT, HAVING A RADIAL BEARING OF SOUTH 33°06'01" WEST, A CENTRAL ANGLE OF 01°51'50" AND A RADIUS OF 905.35 FEET, FOR A DISTANCE OF 29.45 FEET TO THE WEST LINE OF GOVERNMENT LOT 3, THENCE NORTH 00°01'58" EAST ALONG SAID LINE 5.86 FEET TO THE POINT OF BEGINNING.

CONTAINING 8899 SQ FT

200: 092 7002910

PARCEL C

2001 092 7002910

THAT PORTION OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S LAKE UNION LINE RIGHT OF WAY, SITUATED IN GOVERNMENT LOT 3, SECTION 13, TOWNSHIP 25 NORTH, RANGE 3 EAST, W.M., KING COUNTY, WASHINGTON, BEING A PORTION OF THE SAME RIGHT OF WAY AS DESCRIBED IN DEED FROM MARY J. ROSS TO THE SEATTLE, LAKE SHORE AND EASTERN RAILWAY COMPANY (PREDECESSOR OF THE NORTHERN PACIFIC RAILWAY COMPANY) FILED FOR RECORD MARCH 8, 1887, IN BOOK 37, PAGE 787, RECORDS OF SAID COUNTY, LYING NORTHERLY OF WEST EWING ST, LYING SOUTHERLY OF W EWING PLACE, AND LYING WESTERLY OF THE NORTHEASTERLY PROLONGATION OF THE LINE COMMON TO LOTS 8 AND 9, BLOCK 13, ROSS SECOND ADDITION TO THE CITY OF SEATTLE AS PER VOLUME 2 OF PLATS, PAGE 140, RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF W EWING PLACE WITH THE WEST LINE OF SAID GOVERNMENT LOT 3, THENCE NORTH  $89^{\circ}34'02''$  EAST ALONG THE CENTERLINE OF W. EWING PLACE 115.71 FEET, THENCE SOUTH  $00^{\circ}25'58''$  EAST 25.00 FEET TO THE INTERSECTION OF THE EASTERLY RIGHT OF WAY LINE OF W. EWING STREET WITH THE SOUTHERLY RIGHT OF WAY LINE OF W EWING PLACE AND THE POINT OF BEGINNING, THENCE NORTH  $89^{\circ}34'02''$  EAST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF W. EWING PLACE 30.01 FEET; THENCE SOUTHEASTERLY ALONG A CURVE TO THE RIGHT, HAVING A RADIAL BEARING OF SOUTH  $36^{\circ}31'46''$  WEST, A CENTRAL ANGLE OF  $05^{\circ}09'58''$ , AND A RADIUS OF 1199.20 FEET, FOR A DISTANCE OF 108.12 FEET, THENCE SOUTH  $48^{\circ}18'17''$  EAST 101.74 FEET TO THE NORTHEASTERLY PROLONGATION OF THE LINE COMMON TO LOTS 8 AND 9 OF SAID BLOCK 13, THENCE SOUTH  $41^{\circ}11'40''$  WEST ALONG SAID PROLONGED LINE 24.89 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF W EWING STREET, THENCE NORTH  $48^{\circ}19'55''$  WEST ALONG SAID RIGHT OF WAY LINE 232.19 FEET TO THE POINT OF BEGINNING.

CONTAINING 5282 SQ. FT

**EXHIBIT B TO EASEMENT AGREEMENT**

**LEGAL DESCRIPTION OF TRAIL EASEMENT AREA AND PERMITTED  
EXCEPTIONS**

UP  
THAT PORTION OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S LAKE UNION LINE RIGHT OF WAY, SITUATED IN GOVERNMENT LOT 3, SECTION 13, TOWNSHIP 25 NORTH, RANGE 3, EAST, W.M., KING COUNTY, WASHINGTON, BEING A PORTION OF THE SAME RIGHT OF WAY AS DESCRIBED IN DEED FROM MARY J ROSS TO THE SEATTLE, LAKE SHORE AND EASTERN RAILWAY COMPANY (PREDECESSOR OF THE NORTHERN PACIFIC RAILWAY COMPANY), FILED FOR RECORD MARCH 8, 1887, IN BOOK 37, PAGE 787, RECORDS OF SAID COUNTY, LYING NORTHERLY OF WEST EWING ST., LYING SOUTHERLY OF W EWING PLACE, AND LYING WESTERLY OF THE NORTHEASTERLY PROLONGATION OF THE LINE COMMON TO LOTS 8 AND 9, BLOCK 13, ROSS SECOND ADDITION TO THE CITY OF SEATTLE AS PER VOLUME 2 OF PLATS, PAGE 140, RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

2001 092 7082918  
COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF W EWING PLACE WITH THE WEST LINE OF SAID GOVERNMENT LOT 3, THENCE NORTH 89°34'02" EAST ALONG THE CENTERLINE OF W EWING PLACE 115.71 FEET, THENCE SOUTH 00°25'58" EAST 25.00 FEET TO THE INTERSECTION OF THE EASTERLY RIGHT OF WAY LINE OF W EWING STREET WITH THE SOUTHERLY RIGHT OF WAY LINE OF W EWING PLACE, THENCE NORTH 89°34'02" EAST ALONG THE SOUTHERLY RIGHT OF WAY LINE OF W EWING PLACE 14.10 FEET TO THE POINT OF BEGINNING, THENCE CONTINUING NORTH 89°34'02" EAST 15.91 FEET, THENCE SOUTHEASTERLY ALONG A CURVE TO THE RIGHT, HAVING A RADIAL BEARING OF SOUTH 36°31'46" WEST, A CENTRAL ANGLE OF 05°09'58", AND A RADIUS OF 1199.20 FEET, FOR A DISTANCE OF 108.12 FEET, THENCE SOUTH 48°18'17" EAST 101.74 FEET TO THE NORTHEASTERLY PROLONGATION OF THE LINE COMMON TO LOTS 8 AND 9 OF SAID BLOCK 13, THENCE SOUTH 41°11'40" WEST ALONG SAID PROLONGED LINE 9.50 FEET, THENCE NORTH 48°18'17" WEST 101.82 FEET, THENCE NORTHWESTERLY ALONG A CURVE TO THE LEFT, HAVING A RADIAL BEARING OF SOUTH 41°41'43" WEST, A CENTRAL ANGLE OF 05°46'42", AND A RADIUS OF 1189.70 FEET, FOR A DISTANCE OF 119.98 FEET TO THE POINT OF BEGINNING

CONTAINING 2050 SQ FT

THOSE PORTIONS OF LOTS 1, 2 AND 3, BLOCK 47, GILMAN'S ADDITION, TO THE CITY OF SEATTLE AS PER VOLUME 5 OF PLATS, PAGE 93, RECORDS OF KING COUNTY, WASHINGTON, AND OF THAT PORTION OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY LAKE UNION LINE RIGHT OF WAY LYING EAST OF THE WEST LINE OF GOVERNMENT LOT 3, SECTION 13, TOWNSHIP 25 NORTH, RANGE 3 EAST, W.M., KING COUNTY, WASHINGTON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF W EWING PLACE WITH THE WEST LINE OF SAID GOVERNMENT LOT 3, THENCE NORTH 00°01'58" EAST ALONG THE WEST LINE OF SAID GOVERNMENT LOT 3 FOR A DISTANCE OF 46.73 FEET TO THE POINT OF BEGINNING, THENCE NORTHWESTERLY ALONG A CURVE TO THE LEFT HAVING A RADIAL BEARING OF SOUTH 31°02'43" WEST, A CENTRAL ANGLE OF 02°11'13", AND A RADIUS OF 910.37 FEET, FOR A DISTANCE OF 34.75 FEET, THENCE NORTH 00°01'58" EAST 13.34 FEET, THENCE

NORTH 60°48'37" WEST 112.72 FEET TO THE NORTH LINE OF LOT 3 OF SAID BLOCK 47, THENCE SOUTHEASTERLY ALONG THE NORTH LINE OF SAID LOT 3, ALONG A CURVE TO THE RIGHT, HAVING A RADIAL BEARING OF SOUTH 21°30'02" WEST, A CENTRAL ANGLE OF 03°40'01", AND A RADIUS OF 930.37 FEET, FOR A DISTANCE OF 59.54 FEET, THENCE SOUTH 61°52'53" EAST 83.74 FEET, THENCE SOUTH 59°31'29" EAST 86.31 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF W E WING PLACE, THENCE SOUTH 89°34'02" WEST ALONG SAID RIGHT OF WAY LINE 49.48 FEET, THENCE NORTHWESTERLY ALONG A CURVE TO THE LEFT, HAVING A RADIAL BEARING OF SOUTH 33°06'01" WEST, A CENTRAL ANGLE OF 01°51'50", AND A RADIUS OF 905.35 FEET, FOR A DISTANCE OF 29.45 FEET TO THE WEST LINE OF GOVERNMENT LOT 3, THENCE NORTH 00°01'58" EAST ALONG SAID LINE 5.86 FEET TO THE POINT OF BEGINNING

CONTAINING 2644 SQ. FT.

Subject to.

#### Permitted Exceptions

1. Interest of heirs of Mary J. Ross (if any)
2. Possible reversionary interest(s) of present or previous owners of the abutting properties to the current or former railroad right-of-way.
3. Reversionary rights of the United States, any municipality, adjoining land owners, and their successors, assigns or grantees, as if the property were acquired by act of congress or court decree, as to any portion(s) of the right-of-way no longer used for railroad purposes including, but not limited to, reservations of oil, gas and other minerals or rights of the railroad to those portion(s) remaining for the use of railroad right-of-way.
4. Mortgage in the nature of a trust deed, and supplemental indentures, on this and other property, made by Northern Pacific Railway Company to the Mercantile Trust Company, as Trustee, dated November 10, 1896, recorded December 28, 1896 under Recording No. 153717 and recorded in Volume 137 of Mortgages, Page 1, to secure a bond issue of \$130,000,000.00 and other amounts to be advanced

The Bankers Trust Company is now the successor trustee.

#### MORTGAGE MODIFICATION AND THE TERMS AND CONDITIONS THEREOF

DATED March 2, 1970 & May 14, 1981  
March 3, 1970 & October 14, 1981

RECORDING NO 6625583 and 9110140223

2001 992 7002918

5

With regards to the mortgages named in paragraph 4 above, Seller is subject to the following conditions with Burlington Northern Railroad Company as contained in paragraph 11 of that certain Purchase and Sale Agreement dated November 12, 1996 and signed November 13, 1996 between Seller and Burlington Northern Railroad Company which states

"11. Liens of Seller's Mortgages--Seller shall deliver to Buyer, who shall place of record, good and sufficient releases of the liens of Seller's mortgages, where required under the terms of any mortgage on the Property, within one hundred eighty (180) days after the first meeting of Seller's Board of Directors held after the conveyance contemplated herein. In the event Seller shall be unable to obtain said releases for any reason, Seller shall have the right to terminate this Agreement upon serving written notice of termination upon Buyer within fifteen (15) days thereafter, and both parties shall thereupon be released and discharged from all liabilities and obligations hereunder, except that Seller shall repay to Buyer any and all sums therefore paid by Buyer to Seller upon a reconveyance of title to the Property to Seller free and clear of defects or objections to the same extent as if no conveyance had been made to Buyer hereunder."



Return Address

City of Seattle S-DOT R/W  
700 Fifth Avenue Suite 3900  
Seattle, WA 98104-5043



20031230001963

PACIFIC NW TIT QCD  
PAGE001 OF 018  
12/30/2003 15:58  
KING COUNTY, WA

38.00

Document Title(s) (or transactions contained therein)

1 Quitclaim Deed

18/36 PNWT

Reference Number(s) of Documents assigned or released:  
(on page \_\_\_ of document)

W6975-12

Grantor(s) (Last name first, then first name and initials)

1 The Burlington Northern and Santa Fe Railway Company

Grantee(s) (Last name first, then first name and initials)

1 The City of Seattle

Legal Description (Abbreviated i.e. lot, block, plat or section, township, range)

Portions of Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East, W M, SE¼ NW¼ of Section 13, Township 25 North, Range 3 East, W M, SW¼NW¼ of Section 13, Township 25 North, Range 3 East, W M, Lot 8, 9, 10, 11, 12, and 13, Block 100, Gilman's Addition to the City of Seattle, and SE¼ of the NE¼ of Section 14, Township 25 North, Range 3 East, W M, all in King County, Washington

Additional legal is: on pages numbered 12 through 18 of document attached

Assessor's Property Tax Parcel/Account Number

Tax Parcel/Account Number 132503-9006 & 132503-9012  
and portions of Tax Parcel/Account Numbers 132503-9006, 277060-5690 and 277060-5642

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

E2011133

12/30/2003 15:47  
KING COUNTY, WA  
TAX \$5,688.06  
SALE \$371,295.00

PAGE001 OF 001



**WHEN RECORDED MAIL TO:**

The City of Seattle  
700 Fifth Avenue, Suite 3900  
Seattle, WA 98104  
Attention: Director of Transportation

---

**QUIT CLAIM DEED**  
(Washington)

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, a Delaware corporation, (formerly Burlington Northern Railroad Company), with its principal place of business at 2500 Lou Menk Drive, Fort Worth, Texas 76131-2830, hereinafter called "Grantor", for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid, conveys and quitclaims, without any covenants of warranty whatsoever and without recourse to the Grantor, its successors and assigns, to **THE CITY OF SEATTLE**, a municipal corporation organized and existing under the laws of the State of Washington, with its address at 700 Fifth Avenue, Suite 3900, Seattle, Washington 98104, Attention: Director of Transportation, hereinafter called "Grantee", all its right, title and interest in and to the Railbank Premises and Sale Premises, if any, in real estate, and all improvements thereon, including track structures, bridges and culverts, subject however, to all existing interests, including but not limited to all reservations, rights-of-way and easements of record or otherwise, situated in the County of King, State of Washington, together with all after acquired title of Grantor thereon, being more particularly described on EXHIBIT "A" ("Railbank Premises") and EXHIBIT "B" ("Sale Premises"), collectively, hereinafter called "Premises"

This deed ("Deed") is granted in accordance with the terms and conditions of that certain Agreement by and between The Burlington Northern and Santa Fe Railway Company (Formerly Known as Burlington Northern Railroad Company) and the City of Seattle Concerning the Transfer of Land and Other Property Interests, the Relocation of Track, the Correction of a Deed and Interim Trail Use/Railbanking Agreement, dated December 29, 2003, including any supplements and amendments thereto ("Agreement"), and is made subject to the terms and conditions contained therein, which terms and conditions shall continue to be controlling and shall survive recordation of this Deed

Grantee acknowledges that, according to Grantor's records, Grantor's ownership interest in the Premises may be subject to reversion upon abandonment of use for railroad purposes, and that this Deed releases and conveys only Grantor's ownership interest in the Premises

Grantee also acknowledges that a material consideration for this conveyance, without which it would not be made, is the agreement by the Grantee, for itself and for its successors and assigns, that Grantor, its predecessors, successors and assigns shall be in no manner responsible to Grantee, or its successors or assigns (including any subsequent owner or purchaser) for any and all claims, demands, damages causes of action, including loss of access, or suits regarding the quiet and peaceable possession of the Premises, or title thereto

Grantee acknowledges that as of Closing (defined in the Agreement) the Grantee will have had an opportunity to inspect the Premises. Grantee further acknowledges that Grantor has made no representation to the Grantee concerning the state, condition or quality of title of the Premises. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PREMISES, THEIR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR THE QUALITY OF TITLE, EXCEPT AS OTHERWISE SET FORTH HEREIN. GRANTOR SHALL NOT BE LIABLE TO THE GRANTEE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) WITH RESPECT TO THE CONDITION, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE PREMISES AT CLOSING, THE GRANTEE ACCEPTS THE PREMISES IN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, EXCEPT AS PROVIDED IN SECTION 3 BELOW, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTEREST, AND TITLE

(1) Management, Operation and Maintenance of the Premises

As required by Section 8(d) of the National Trail Systems Act ("Act") (16 U.S.C. 1247(d)) as it may be amended from time to time the Grantee assumes full and complete responsibility (whether financial or otherwise) for the management, operation and maintenance of the Railbank Premises, and under no circumstances shall GRANTOR be required to manage, operate or maintain the Railbank Premises after Closing. After Closing, the Grantee will assume all responsibility for management, operation and maintenance of the Sale Premises, except for Parcel E (as described in Exhibit B), which shall be GRANTOR's responsibility for the duration of GRANTOR's retained railroad easement as described in Section 7 below. In no event shall this Deed be construed to create a joint enterprise for the use or operation of the Premises

(2) Indemnity.

(a) Subject to the provisions of Section 3 pertaining expressly to environmental liability, the Grantee will indemnify and hold GRANTOR harmless from

any and all liability, costs or expense, including attorneys' fees, incurred by or assessed against GRANTOR (i) on account of injuries, death, or property loss or damage arising from the actions or inactions of the Grantee, its agents, employees or invitees or any third party trespasser(s) in connection with the Grantee's use, operation or maintenance of the Premises after the date of Closing, or (ii) on account of the violation of any law, ordinance, regulation, injunction, or final order or decree of bodies or tribunals having any jurisdiction or authority, which in any way affect the performance of the Agreement, by the Grantee or its employees or agents. After the date of Closing, except as otherwise provided in Section 3 below, the Grantee shall indemnify, hold harmless, and waive, release and discharge GRANTOR from any and all present or future claims or demands, and any and all damages, loss, injury, claims or costs, including fines, penalties and judgments arising from or in any way related to the condition of the Premises. The indemnities set forth in this Section shall not apply to the extent that such claims, demands, damages, loss, injury, or costs, including fines, penalties and judgments, are caused by the willful or negligent acts or omissions of GRANTOR, its agents or employees. The Grantee shall be responsible for defense of any litigation contesting the right of the parties hereto to enter into or effectuate the Agreement. In the event that the Grantee does not actively defend against such claims on its own behalf and/or in joint defense with GRANTOR, the Grantee agrees to reimburse GRANTOR for reasonable and necessary out-of-pocket expenses, including reasonable attorneys' fees incurred by GRANTOR in connection with litigation contesting the right of the parties hereto to enter into or effectuate the Agreement. The Grantee shall obtain and maintain in force after Closing Commercial General Liability Insurance or comparable self-insurance for all claims arising out of bodily injury and death and from damage to or destruction of property of others, including loss of use thereof, in connection with the Grantee's use, operation or maintenance of the Premises after the date of Closing, with minimum limits for bodily injury and property damage of One Million Dollars (\$1,000,000) per occurrence, with an aggregate of Five Million Dollars (\$5,000,000). If the Grantee does not self-insure, then such insurance policies shall name GRANTOR (and GRANTOR's affiliates, officers, directors, shareholders, employees, agents, licensees and invitees, collectively referred to as GRANTOR's associated entities) as additional insured and shall contain a waiver of the insurer's right of subrogation against GRANTOR and its associated entities. With respect to the Sale Premises the Grantee's insurance obligations shall remain in effect until the earlier of the termination of the Agreement, such time as GRANTOR provides written notice that such insurance is no longer required or such time as GRANTOR abandons rail service on its property adjacent to the Sale Premises, at which time the Grantee's insurance obligations shall end with respect to the Sale Premises, and further provided that with respect to the Railbank Premises the Grantee's insurance obligations shall be limited to five (5) years from the date of Closing.

(b) Subject to the provisions of Section 3 pertaining expressly to environmental liability, GRANTOR will indemnify and hold the Grantee harmless from any and all liability, costs or expense, including attorneys' fees, incurred by or assessed against the Grantee on account of injuries, death, or property loss or damage arising from the actions or inactions of GRANTOR, its agents, employees, invitees or any third party trespasser(s) in connection with GRANTOR's use, operation or maintenance of the Premises on or before the date of Closing

(3) Environmental Liability

(a) With respect to the Railbank Premises, GRANTOR shall indemnify, defend and hold the Grantee harmless (i) from claims by third parties for diminution in property value and (ii) for all remedial action costs, including attorneys' fees, as defined in the Model Toxics Control Act, as amended ("MTCA"), from groundwater contamination identified in the report entitled Preliminary Site Investigation Ship Canal Trail, Seattle, Washington, prepared by HWA GeoSciences Inc., dated December 5, 2003, if required by a court or an environmental agency with jurisdiction, to the extent such contamination was caused by GRANTOR's railroad operations and where such contamination is above Model Toxic Control Act as amended (MTCA) standards appropriate for the site, or other applicable standards, except to the extent that the Grantee causes, contributes or otherwise exacerbates such contamination. Contamination shall mean the presence of one or more Hazardous Substances as defined herein

(b) The Grantee has been allowed to make an inspection of the Premises and has knowledge as to the past use of said Premises. Subject to other applicable provisions of the Agreement, based upon this inspection and knowledge, the Grantee is aware of the condition of the Premises and **THE GRANTEE IS AWARE THAT THE GRANTEE IS PURCHASING SAID PREMISES ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF SAID PREMISES, AND THAT THE GRANTEE IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM GRANTOR AS TO ANY MATTERS CONCERNING SAID PREMISES,** including the physical condition of said Premises and any defects thereof, the presence of any Hazardous Substances, wastes or contaminants in, on or under said Premises, the condition or existence of any of the above ground or underground structures or improvements in, of or under said Premises, the condition of title to said Premises, and the leases, easements or other agreements affecting said Premises, except as specifically set forth in Subsection 3(a) above.

(c) The Grantee is aware of the risk that Hazardous Substances and contaminants may be present on the Premises, and except to the extent expressly provided otherwise in Subsection 3(a) above, the Grantee hereby waives, releases and discharges forever GRANTOR from any and all present or future claims or demands of the Grantee, and any and all damages, loss, injury, liability claims or costs, including fines, penalties and judgments, and attorney's fees incurred by the Grantee, arising from or in any way related to the condition of the Premises as of Closing or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances or contaminants in, on or under the Premises as of Closing

(d) With respect to the Premises and except as expressly provided otherwise in Subsection 3(a) above, the Grantee shall indemnify, defend and hold harmless GRANTOR from any and all claims or demands, and any and all damages, loss, injury, liability, claims or costs, including fines, penalties and judgments, and attorney's fees, arising from or in any way related to the release or improper disposal of Hazardous Substances on the Railbank Premises and/or the Sale Premises, after Closing, caused by the Grantee, its agents, contractors, invitees or trespassers. This indemnity specifically includes the obligation (if any) of the Grantee to remove, close, remediate, reimburse or take other actions required by any governmental agency concerning any Hazardous Substances or contaminants on the Premises. The foregoing provisions of this Subsection (d) shall not apply to a release of Hazardous Substances to the extent caused by GRANTOR subsequent to Closing.

(e) The rights of GRANTOR and the Grantee under this Section 3 shall be in addition to and not in lieu of any other rights or remedies to which they may be entitled under this document or otherwise. Nothing herein shall prejudice the right of either the Grantee or GRANTOR to seek relief against third parties.

(f) The term "Environmental Law" means any applicable federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

(g) The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substances, material or waste as defined, listed or regulated under any Environmental Law, and includes, without limitation, petroleum oil and any of its fractions.

(4) National Trail Systems Act, Reactivation Rights.

This conveyance shall be interpreted to conform to Section 8(d) of the Act. It is agreed and understood that any conservation/recreation use by the Grantee (or its assignees) shall not impair future restoration of rail service pursuant to the Act. In that event GRANTOR reactivates rail service on the Railbank Premises pursuant to the Act, the Grantee will allow reactivation of rail service on the Railbank Premises pursuant to applicable federal and state laws but only after GRANTOR's repurchase of the Railbank Premises and any improvements thereon at the purchase price stated herein or the then fair market value, whichever is higher, plus all amounts necessary to reimburse the Grantee for any rail or trail-related improvements permissible under the Agreement constructed by or on behalf of the Grantee or its assigns, including without limitation, improvements in connection with the Crossing Easement (as defined in the Agreement) and the costs of track relocation from Parcel E (as described in Exhibit B to this Deed and the Agreement). The Grantee further agrees to take all steps necessary, at no expense to GRANTOR, to comply with any and all state and federal requirements relating to such interim use and reactivation. The fair market value shall be determined by a neutral appraisal process acceptable to all parties, upon the request of any party. Subject to the foregoing, the Grantee shall reconvey the Railbank Premises free and clear of any encumbrances except those accepted by the Grantee at Closing, those subsequently approved in writing by GRANTOR, or those compatible with restoration of rail service.

(5) Post-Closing Obligations.

GRANTOR and GRANTEE acknowledge that the Agreement imposes certain post-Closing obligations as set forth in Sections 1(d) and 14 of the Agreement. GRANTOR and GRANTEE acknowledge said post-Closing obligations are material consideration for the conveyance and/or approval of the Sale Premises and/or the Railbank Premises. The following post-Closing obligations shall be deemed covenants running with the land:

(a) The Grantee shall assume and bear any and all track removal and street restoration obligations pertaining to the Premises.

(b) The Grantee shall construct and maintain a chain-link fence on Grantee property separating the Sale Premises and, to the extent applicable under the C&M Agreement (as defined in the Agreement), the Railbank Premises from GRANTOR's active rail right-of-way in accordance with plans and specifications approved by GRANTOR pursuant to the C&M Agreement.

(6) Obligations are Continuing. Except to the extent expressly otherwise provided herein, the representations, warranties, obligations, terms and conditions of this Deed are continuing and survive Closing; provided, however, that the Grantee has no obligation to indemnify, defend or hold GRANTOR harmless from or against any claim, demand, liability, cost or expense, including attorneys' fees, arising from any portion of the Railbank Premises that GRANTOR reenters for purposes of reinstituting rail service from the date GRANTOR first so reenters. Terms of continuing obligations in this Deed are subject to amendment only by a properly acknowledged deed signed by both the Grantee and GRANTOR, or their respective successors or assigns. If any terms under this Deed shall be judicially determined unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, or (b) any other statutory or common law rules imposing like or similar time limits, then such terms shall continue only for the period of twenty-one (21) years after the death of the last survivor of the lineal descendants of Elizabeth II, Queen of England, living as of the date hereof, or the maximum term allowed by law, if greater.

(7) Retained Interests.

With respect to the conveyances described herein, there is reserved to GRANTOR

(a) A railroad easement including the right, privilege and easement to construct, maintain, repair, renew, use, operate over, replace or remove railroad tracks, trestles, bridges, drainage facilities and appurtenances ("Railroad Facilities") thereto in, along, over, upon or across said Parcel E (as described in Exhibit B to this Deed) necessary or beneficial for the operation of GRANTOR's railroad, including without limitation Railroad Facilities required by GRANTOR, its successors or assigns to provide common carrier or contract rail services, along with reasonable right of entry for the repair, reconstruction and replacement of Railroad Facilities, without limitation as a result of any further enumeration herein, and to have to hold said easement until the Railroad Facilities currently located on Parcel E are relocated pursuant to the C&M Agreement. Notwithstanding any other terms, provisions or limitations on indemnity contained in this Deed, GRANTOR shall defend, indemnify and hold the Grantee and its officers and employees harmless from any and all losses, claims, actions, judgments, property damage, death, personal injuries, or damages suffered by any person or entity (excepting liability for environmental loss, damage, or injury otherwise addressed hereinbelow) arising out of or resulting from GRANTOR's rail operations in Parcel E, including common carrier liability. In no event shall GRANTOR assume any liability or indemnity obligations to the extent arising from the negligent or intentional acts or omissions of Grantee or third parties under the Grantee's reasonable control. Prior to release of the retained easement by GRANTOR, liability and indemnity covered under Section 3 of this Deed shall apply to Parcel E.



provided that, in addition to and notwithstanding the provisions thereof, GRANTOR shall defend, indemnify and hold the Grantee and its officers and employees harmless from any release of Hazardous Substances to the extent caused by GRANTOR during GRANTOR's retained easement. Upon completion of the relocation of the track in accordance with the C&M Agreement described in the Agreement, which completion shall mean the date on which a train can operate on the relocated track, GRANTOR shall release, in a formal recordable document, its reserved easement rights in Parcel E.

(b) A reservation of a non-exclusive easement for the construction, maintenance and operation of one or more pipelines or fiber optic lines and any and all communications facilities as presently located on the Premises.

**TO HAVE AND TO HOLD** the Premises, together with all the appurtenances thereunto belonging, unto the said Grantee, its successors and assigns, forever.

**IN WITNESS WHEREOF**, the said Grantor caused this instrument to be signed by its authorized representative, attested by its Assistant Secretary, and its corporate seal to be affixed hereto on the 29th day of December, 2003.

**THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY**

By

D P Schneider

General Director Real Estate

**ATTEST:**

By

Patricia Zbichorski

Patricia Zbichorski  
Assistant Secretary



APPROVED:

CITY OF SEATTLE

By

Name

Jesse Krail  
~~Grace Crumman~~ JESE KRAIL

Title

Deputy  
A Director, Seattle Department of Transportation

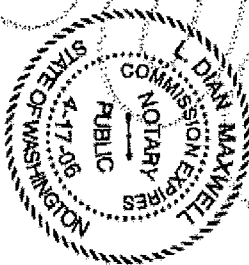
STATE OF WASHINGTON

COUNTY OF SEATTLE

On this 30<sup>th</sup> day of December, 2003, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jesse Krail, to me known to be the Deputy Director, Seattle Department of THE CITY OF SEATTLE, the municipal corporation that approved the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that she is authorized to approve said instrument for said municipal corporation

\* Transportation

Witness my hand and official seal hereto affixed the day and year first above written.



L. Dian Maxwell  
Notary Public for the State of Washington

Residing at

Shoreline

My appointment expires

4/17/2006



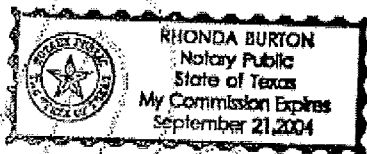
STATE OF TEXAS

§  
§ 55.  
§

COUNTY OF TARRANT

On this 29<sup>th</sup> day of December, 2003, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared D. P. Schneider and Patricia Zbichorski, to me known to be the General Director Real Estate and Assistant Secretary, respectively, of THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal hereto affixed the day and year first above written



Rhonda Burton  
Notary Public in and for the State of Texas

Residing at Carrollton, Texas

My appointment expires 9/21/2004

**FORM APPROVED BY LAW**

APPROVED LEGAL	<u>KKH</u>
APPROVED FORM	<u>SB</u> <u>plac</u>
APPROVED	<u>DEW</u>

BNSF 03276 Seattle, WA

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ATTACHMENT 3



**EXHIBIT "A"**  
**(Railbank Premises)**

**Parcel B-1**  
**(Railbank per Burke-Gilman Trail Agreement)**

That portion of The Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington, lying between 2 lines drawn parallel or concentric with and distant, respectively, 9.0 feet northeasterly and 21 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline, and bounded on the Southeast by a line drawn at right angles or radially from said Main Track Centerline and passing through a point distant 50.0 feet northwesterly, as measured along said Main Track Centerline, from the production north of the Northwestly margin of 8<sup>th</sup> Avenue West (originally platted as Minor Street), as established in the plat of Ross Second Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 140, Records of King County, Washington, and bounded on the Northwest by a line drawn at right angles or radially from said Main Track Centerline and passing through a point distant 165 feet northwesterly, as measured along said Main Track Centerline, from the production south of the Centerline of Jesse Avenue West (originally platted as Jesse Street), as established by said plat of Ross Addition to the City of Seattle;

containing an area of 24,979 square feet, more or less;

situate in the City of Seattle, County of King, State of Washington,

**AND,**

**Parcel B-2**  
**(Railbank sale parcel)**

That portion of The Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East,

Willamette Meridian, in King County, Washington, lying between 2 lines drawn parallel or concentric with and distant, respectively, 210 feet and 35 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline, and bounded on the Southeast by the production south of the Centerline of Jesse Avenue West, and bounded on the Northwest by a line drawn at right angles or radially from said Main Track Centerline and passing through a point distant 165 feet northwesterly, as measured along said Main Track Centerline, from said production south of said Centerline of Jesse Avenue West,

containing an area of 2,310 square feet, more or less;

situate in the City of Seattle, County of King, State of Washington.

**EXHIBIT "B"**

(Sale Premises)

**Parcel C**

That portion of The Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 500 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington, lying between 2 lines drawn parallel or concentric with and distant, respectively, 8.5 feet southwesterly and 35 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast and on the Northwest by lines drawn at right angles or radially from said Main Track Centerline and passing through respective points distant 165 feet northwesterly, as measured along said Main Track Centerline, and 353 feet northwesterly, as measured along said Main Track Centerline, from the production south of the Centerline of Jesse Avenue West (originally platted as Jesse Street), as established in the plat of Ross Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 96, Records of King County, Washington.

TOGETHER WITH that portion of said Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 500 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across said Government Lots 3 and 5 of said Section 13, lying between 2 lines drawn parallel or concentric with and distant, respectively, 8.5 feet southwesterly and 11.0 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast by a line drawn at right angles or radially from said Main Track Centerline and passing through a point distant 353 feet northwesterly, as measured along said Main Track Centerline, from the production south of said Centerline of Jesse Avenue West and bounded on the Northwest by the South margin of West Ewing Place, as said South margin was established by Ordinance 15923 of The City of Seattle,

LESS any portion thereof conveyed in that Quit Claim Deed from the Burlington Northern and Santa Fe Railway Company to Argonaut Properties, Inc., as recorded in Recording Number 9710161624, Records of King County, Washington,

containing an area of 5,576 square feet, more or less,

situate in the City of Seattle, County of King, State of Washington,

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**Parcel D**

That portion of The Burlington Northern and Santa Fe Railway Company's right-of-way, King County, Washington Assessors Parcel number 132503-9006, situate in the Southeast quarter of the Northwest quarter of Section 13, Township 25 North, Range 3 East of the Willamette Meridian, described as follows:

Commencing at the southeast corner of Lot 1 of Block 47 of Gilman's Addition to the City of Seattle, as recorded in Volume 5 of Plats, Page 93, records of King County, Washington; Thence N 00°01'22" W along the easterly line of said Lot 1 a distance of 20.49 feet to the southerly right-of-way margin of The Burlington Northern and Santa Fe Railway Company; Thence along the extension of said easterly line N 00°01'22" W a distance of 23.34 feet to the Point of Beginning.

Thence continuing along the extension of said easterly line of said Lot 1 N 00°01'22" W a distance of 2.90 feet to a point on the arc of a 932.87 foot radius curve which center bears S 30°31'49" W,

Thence southeasterly along the arc of said curve, through a central angle of 5°14'31", a distance of 85.35 feet,

Thence S 89°38'37" W a distance of 4.25 feet to a point on the arc of a 930.37 foot radius curve which center bears S 35°33'39" W;

Thence northwesterly along the arc of said curve, through a central angle of 4°56'23", a distance of 80.21 feet to the Point of Beginning.

LESS any portion thereof conveyed in that Quit Claim Deed from The Burlington Northern and Santa Fe Railway Company to Argonaut Properties, Inc., as recorded in Recording Number 9710161624, Records of King County, Washington,

Containing 207 square feet, more or less;

Gary M. Gervelis, P.L.S. No. 33128

BNSF 03276 Seattle, WA

**Parcel E**  
**(North of Gilman's Addition, between 13<sup>th</sup> Ave. W. and 11<sup>th</sup> Ave. W.)**

That portion of The Burlington Northern and Santa Fe Railway Company's right-of-way, King County, Washington Assessors Parcel number 277060-5642, situate in the Southwest quarter of the Northwest quarter of Section 13, Township 25 North, Range 3 East of the Willamette Meridian, described as follows:

Commencing at the southeast corner of Lot 25 of Block 53 of Gilman's Addition to the City of Seattle, as recorded in Volume 5 of Plats, Page 93, records of King County, Washington, Thence N 00°07'41" W along the easterly line of said Block 53 a distance of 150.93 feet to the southerly right-of-way margin of The Burlington Northern and Santa Fe Railway Company and the Point of Beginning,

Thence along the extension of the easterly line of said Lot 25 N 00°07'41" W a distance of 17.07 feet to a point on the arc of a 947.37 foot radius curve which center bears S 05° 23' 26" E;

Thence southeasterly along the arc of said curve, through a central angle of 20° 39' 04", a distance of 341.46 feet to a point of a compound curvature,

Thence continuing southeasterly an arc distance of 184.88 feet along a non-tangent curve to the right having a radius of 713.78 feet, whose center bears S 16° 25' 36" W and a central angle of 14° 50' 26",

Thence S 57°18'09" E a distance of 66.44 feet;

Thence S 00°01'22" E a distance of 2.90 feet to a point on the arc of a 930.37 foot radius curve which center bears S 30° 37' 16" W;

Thence northwesterly along the arc of said curve, through a central angle 36° 06' 26", a distance of 586.329 feet to the Point of Beginning.

LESS any portion thereof conveyed in that Quit Claim Deed from The Burlington Northern and Santa Fe Railway Company to Argonaut Properties, Inc., as recorded in Recording Number 9710161624, Records of King County, Washington;

Containing 8480 square feet, more or less,

Gary M. Gervelis, P.L.S. No. 33128

BNSF 03276 Seattle, WA

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**EXHIBIT B-ATTACHMENT 3**





**Parcel F**

The Northwestern 20 feet of Lot 9, Block 100, Gilman's Addition to the City of Seattle, according to the plat thereof recorded in Volume 5 of Plats, page 93, Records of King County, Washington;

TOGETHER WITH that portion of the Northwestern 20 feet of Lot 8 of said Block 100 lying west of the West margin of 15<sup>th</sup> Avenue West as established by Ordinance 69693 of The City of Seattle,

containing an area of 1,107 square feet, more or less;

situate in the City of Seattle, County of King, State of Washington,

**Parcel G**

The Northwestern 20 feet of Lots 11, 12 and 13, Block 100, Gilman's Addition to the City of Seattle, according to the plat thereof recorded in Volume 5 of Plats, page 93, Records of King County, Washington;

EXCEPT the Southwesterly 18 feet of said Northwestern 20 feet of said Lot 13;

containing an area of 1,442 square feet, more or less;

situate in the City of Seattle, County of King, State of Washington;

AND,

**Parcel I**

That portion of The Burlington Northern and Santa Fe Railway Company's original 50 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 25.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across the H A Smith Donation Claim No 41 in Section 14, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington, lying between the Northwestern line of said right-of-way and a line drawn parallel or concentric with and distant 14 feet northwesterly of, as measured at right angles or radially from said Main Track Centerline, and bounded on the Northeast by the production northwesterly of the Northeasterly line of

the Southwesterly 18 feet of Lot 13, Block 100, Gilman's Addition to the City of Seattle, according to the plat thereof recorded in Volume 5 of Plats, page 93, Records of King County, Washington, and bounded on the Southwest by a line distant 195 feet southwesterly, as measured along said Railway Company's Main Track Centerline, from said production northwesterly of the Northeasterly line of the Southwesterly 18 feet of Lot 13, Block 100 and drawn at right angles or radially from said Main Track Centerline,

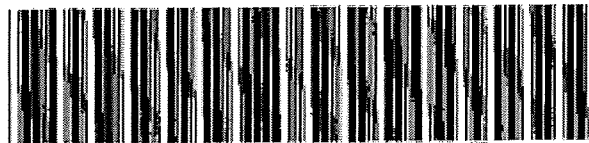
TOGETHER WITH that portion of Unplatted Reserve A as shown in said plat of Gilman's Addition to the City of Seattle, lying northwesterly of said Northwesterly line of said Lake Union Line right-of-way and lying southeasterly of a line drawn parallel or concentric with and distant 5 feet northwesterly of said Northwesterly line of said right-of-way and bounded on the Northeast by said production northwesterly of the Northeasterly line of said Southwesterly 18 feet of said Lot 13, Block 100, and bounded on the South by the North margin of West Emerson Street as established by Ordinance 39854 of The City of Seattle;

TOGETHER WITH that portion of said Burlington Northern and Santa Fe Railway Company's original 50 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) lying southwesterly of said line drawn at right angles or radially from said Main Track Centerline and distant 195 feet, as measured along said Railway Company's Main Track Centerline, from said production northwesterly of the Northeasterly line of the Southwesterly 18 feet of Lot 13, Block 100, and northwesterly of a line drawn as follows

Beginning at the intersection of the last described line drawn at right angle or radially from said Main Track Centerline and said line drawn parallel or concentric with and distant 14 feet northwesterly of, as measured at right angles or radially from said Main Track Centerline, thence southwesterly in a straight line to a point on said North margin of West Emerson Street distant 7 feet east of the intersection of said North margin and said line drawn parallel or concentric with and distant 5 feet northwesterly of said Northwesterly line of said right-of-way;

containing an area of 4,025 square feet, more or less;

situate in the City of Seattle, County of King, State of Washington



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PAGE 001 OF 013  
07/30/2004 13:19  
KING COUNTY, WA

**WASHINGTON STATE COUNTY AUDITOR/RECORDERS  
INDEXING FORM (Cover Sheet)**

When recorded mail to  
City of Seattle  
c/o Seattle Department of Transportation  
700 Fifth Avenue, Suite 3900  
Seattle, Washington 98104  
Attention: Larry Huggins, Senior Property Agent

---

**Document Title(s) (or transactions contained therein):**

Easement

**Reference Number(s) of Documents assigned or released:**

N/A

**Grantor(s) (Last name first, then first name and initials)**

The Burlington Northern and Santa Fe Railway Company

**Grantee(s) (Last name first, then first name and initials)**

The City of Seattle

**Legal Description (abbreviated i.e. lot, block, plat or section, township, range)**

PTN Lots 13, 14 & 15, Blk 100, Gilman's Add to City of Seattle, & PTN H A Smith  
Donation Claim No 41, Secs 13 & 14, T25N, R3E, W M

Additional Legal is on Exhibit A of document

Assessor's Property Tax Parcel/Account Numbers: 277060-5642

**EXCISE TAX NOT REQUIRED**  
King Co. Records Division

By [Signature] Deputy



**When Recorded Mail to:**

City of Seattle  
c/o Seattle Department of Transportation  
700 Fifth Avenue, Suite 3900  
Seattle, Washington 98104  
Attention: Larry Huggins, Senior Property Agent

**EASEMENT**

**KNOW ALL MEN BY THESE PRESENTS,** that **THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY**, (formerly Burlington Northern Railroad Company), a Delaware corporation, whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, Grantor, in consideration of the promises hereinafter specified of **THE CITY OF SEATTLE**, a municipal corporation of the State of Washington, its successor and assigns, whose address for purposes of this instrument is Seattle Department of Transportation, 700 Fifth Avenue, Suite 3900, Seattle, Washington 98104, Attention Director, Grantee, does hereby donate, remise, release and quitclaim unto the Grantee, subject to the terms and conditions hereinafter set forth, a non-exclusive **EASEMENT** for the use, construction, reconstruction, maintenance, repair, improvement and lighting of a public at grade crossing solely for pedestrians, non-motorized human-powered vehicles and non-motorized wheeled recreational equipment, and for wheelchairs (motorized or otherwise) and like equipment to permit use by disabled users at approximately Railroad Mile Post 5.02, hereinafter called Crossing over, upon and across the following more particularly described premises (Premises), situated in King County, State of Washington, to-wit

That portion of The Burlington Northern and Santa Fe Railway Company's right of way in Seattle, King County, Washington, described on the attached Exhibit "A" consisting of one page, attached hereto and by this reference made a part hereof

Assessor's Property Tax Parcel Account Number(s) 277060-5642

**RESERVING**, however, unto the Grantor, its successors and assigns, the right to operate, maintain, alter, add, repair, replace, relocate, install, renew, improve and remove communication lines above, below and on the surface of the Premises, including, without limitation, transmission by conduit, fiber optics, cable, wire or other means of electricity, voice data, video, digitized information, or other materials or information, pipelines, utility lines, track and facilities including the right of ingress and egress in any such manner as does not unreasonably interfere with Grantee's use of the Premises for the Crossing, and further



reserving unto Grantor, its successors and assigns, all right and privilege of ingress and egress to said Premises as Grantor, its successors and assigns may require to investigate and remediate environmental contamination and hazards, and further reserving the right and privilege to use said land for any and all purposes not inconsistent with the use thereof for said Crossing purposes.

The foregoing easement is made subject to and upon the following express conditions

- 1 To existing interests in the above-described Premises to whomsoever belonging and of whatsoever nature and any and all extensions and renewals thereof, including but not limited to underground pipe line or lines, or any type of wire line or lines, if any.
- 2 Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of said Crossing shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters; and of materials and workmanship equally as good as those now existing.
- 3 The Grantee shall bear the cost of removal, relocation or reconstruction of any and all right of way fences, telephone or telegraph poles, or other facilities, the removal, relocation or reconstruction of which may be made necessary by reason of the use of said Premises for said Crossing purposes
- 4 The Grantee shall, at its own cost and expense, make adjustment with industries or other lessees of Grantor for buildings or improvements that may have to be relocated, reconstructed or destroyed by reason of the construction and maintenance of said Crossing on said Premises
- 5 This instrument is granted according to the terms and conditions of that certain Construction and Maintenance Agreement between the Grantor and the Grantee ("CMA") to be entered into pursuant to the terms of that certain Agreement by and Between The Burlington Northern and Santa Fe Railway Company Concerning the Transfer of Land and Other Property Interests, The Relocation of Track, The Correction of a Deed and Interim Trail Use/Railbanking Agreement, dated December 29, 2003, and shall be made subject to the terms and conditions contained in the CMA and conditioned upon execution of the CMA by the parties

- 6 The Grantee or its contractor(s) shall telephone Grantor's Communication Network Control Center at (800) 533-2891 ( a 24 hour number) to determine if fiber optic cable is buried anywhere on the premises, and if so, the Grantee or its contractor(s) will contact the Telecommunications Company(ies) involved, and make arrangements with the Telecommunications Company(ies) for protection of the fiber optic cable prior to beginning any work on the Premises
- 7 If said described Premises, or any part thereof, shall at any time cease to be used by said Grantee, or by the public, for the purpose, as aforesaid, or should they be converted to any other use whatsoever, or should the Grantee fail to perform any of the conditions herein expressed, then upon Grantor's written notice to Grantee of such breach and Grantee's failure to cure such breach within forty-five (45) days of receipt of written notice, all the right, title, interest, benefits and enjoyment of said Grantee, or of the public, in and to said Premises, for any purposes whatsoever, shall immediately cease and the said Grantor, its successors and assigns, may, at its or their option, re-enter, retake and hold said described Premises as of the present estate of said Grantor without compensation to said Grantee, the public, or any other person whomsoever, for improvements or property removed, taken or destroyed, or liability for loss of, or damage to any Premises or the improvements thereon abutting on said Premises or any part thereof.
- 8 The Grantee agrees to keep the above-described Premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said Premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire
- 9 Grantee shall indemnify and save harmless Grantor, its agents, and employees, against all liability, claims, demands, damages, or costs for (a) death or bodily injury to persons including, without limitations, the employees of the parties hereto, (b) injury to property including, without limitation, environmental damage to the property of the parties hereto, (c) design defects, or (d) any other loss, damage or expense arising under either (a), (b) or (c), and all fines or penalties imposed upon or assessed against Grantor, and all expenses of investigating and defending against same, arising in any manner out of (1) activities, use or presence, or negligence of Grantee, or Grantee's employees, or Grantee's contractors, subcontractors, agents, invitees or any of their employees, in, on, or near Grantor's right of way in the immediate vicinity of the Premises, or, (2) the performance, or failure to perform, by the Grantee, its contractors, subcontractors, or agents, its work or any obligation under this Easement
- 10 The Grantor does not warrant its title to said Premises nor undertake to defend the Grantee in the peaceable possession, use or enjoyment thereof, and the grant herein made is subject to all outstanding rights or interest of others, including the tenants and licensees of the Grantor

- 11 This Easement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns and successors of Grantor and Grantee
- 12 Grantee shall not disturb or interfere with the use of any improvements on the Premises, except as expressly permitted by Grantor
- 13 This Easement shall commence on the Effective Date and shall continue for a period of fifty (50) years or until the last day of trail use, whichever occurs earlier, provided, however, upon expiration of the fifty (50) year term, in the event the trail is still in use, the terms of this Easement shall continue for a one year term thereafter unless either party has provided the other party six months' prior written notice of intent to terminate the Easement. Thereafter, the Easement shall continue for successive one-year terms in the same fashion unless and until this Easement has been terminated by either party on six month's advance written notice prior to the end of any one year renewal term (or until the last day of trail use, if earlier)
- 14 Grantee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the maintenance and use of the Crossing and the use of the Premises
- 15 For the purposes of this Easement all persons or entities using the Crossing shall be deemed the invitees of the Grantee, except Grantor, its affiliates, successors, assigns, and the agents, employees, contractors, licensees, lessees, permittees and invitees of each of them. If ordered to cease using the Crossing at any time by Grantor's personnel due to any hazardous condition, Grantee shall immediately do so. Notwithstanding the foregoing right of Grantor, the parties agree that Grantor has no duty or obligation to monitor Grantee's use of the Crossing to determine the safe nature thereof, it being solely Grantee's responsibility to ensure that Grantee's use of the Crossing is exercised safely. Neither the exercise nor the failure by Grantor to exercise any rights granted in this Section will alter the liability allocation provided by this Easement
- 16 If at any time during the term of this Easement Grantor shall require the use of its rail corridor in such a manner as would, in Grantor's opinion, be interfered with by the Crossing, Grantor shall have the right, at its sole expense, to make such changes in the Crossing as in the sole discretion of Grantor may be necessary to avoid interference with the proposed use of Grantor's rail corridor, including, without limitation, the relocation of the existing or the construction of a new Crossing, provided, however, any such relocation shall be designed and implemented in a manner consistent with Grantee's trail alignment and applicable law, including, without limitation, the Americans with Disabilities Act (as amended), and applicable guidelines including,

without limitation, the American Association of State Highway Transportation Officials Guidelines for Development of Bicycle Facilities 1999 (as amended)

17 Upon lawful termination of this Easement, Grantor may remove the Crossing and restore the rail corridor to the condition as of the Effective Date of this Easement at Grantee's sole cost and expense and without incurring any liability to the Grantee. Grantee shall within sixty (60) days after bill is rendered therefor, reimburse Grantor for all costs and expenses which Grantor may incur in connection therewith, and such obligations of Grantee shall survive termination of this Easement.

18 Grantee shall, at its sole cost and expense, procure and maintain during the life of this Easement the following insurance coverage or, for so long as Grantee is a municipality of the State of Washington, Grantee is allowed to self-insure without the prior written consent of Grantor. However, any contractors or subcontractors of Grantee performing work on or about the premises, or Grantee, should Grantee elect to purchase primary insurance, shall obtain insurance consistent with the following terms (in addition to Grantee's self-insurance), provided, however, in the event and to the extent any such work of contractors or subcontractors is performed pursuant to the terms and conditions of the Construction and Maintenance Agreement referenced in Section 5 hereinabove, the insurance terms therein shall govern.

A. Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ Employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- ◆ Any exclusions related to the explosion, collapse and underground hazards shall be removed.

No other endorsements limiting coverage may be included on the policy, with regard to any activity performed pursuant to this Easement absent BNSF's written consent, which consent shall not be unreasonably withheld.



B

#### Other Requirements

- i) Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists
- ii) Insurer (if Grantee elects to provide insurance rather than self insurance) and/or Grantee's contractors and subcontractors agrees to waive its right of recovery against Grantor for all claims and suits against Grantor. In addition, its insurers, through policy endorsement, waive their right of subrogation against Grantor for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Insurer further waives its right of recovery, and insurers also waive their right of subrogation against Grantor for loss of its owned or leased property or property under its care, custody or control
- iii) Not more frequently than once every seven (7) years, Grantor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry
- iv) All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Grantor and Staubach Global Services RR, Inc. as an additional insureds with respect to work performed under this Easement. Severability of interest and naming Grantor and Staubach Global Services RR, Inc. as additional insureds shall be indicated on the certificate of insurance
- v) Any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Grantee in lieu of insurance. Any and all Grantor liabilities that would otherwise, in accordance with the provisions of this Easement, be covered by Grantee's insurance will be covered as if Grantee elected not to include a deductible, self-insured retention, or other financial responsibility for claims
- vi) Any insurance policy shall be written by a reputable insurance company acceptable to Grantor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

vii) Acceptance of a certificate or letter of self-insurance that does not comply with this section shall not operate as a waiver of Grantee's obligations hereunder.

viii) The fact that insurance or self-insurance is obtained by Grantee or others shall not be deemed to release or diminish the liability of Grantee including, without limitation, liability under the indemnity provisions of this Easement. Damages recoverable by Grantor shall not be limited by the amount of the required insurance coverage

ix) For purposes of this section, Grantor shall mean "Burlington Northern Santa Fe Corporation," "The Burlington Northern and Santa Fe Railway Company" and the subsidiaries, successors, assigns and affiliates of each

19 Grantee shall strictly comply with all federal, state and local environmental laws and regulations to the extent applicable to its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws") Grantee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises Grantee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises

20 Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises discovered by Grantee, violation of Environmental Laws known to Grantee, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises Grantee shall use the best efforts to promptly respond to any release on or from the Premises caused by Grantee, its agents, employees, contractors or invitees Grantee shall also give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation caused by Grantee, its agents, employees, contractors or invitees

21 In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Premises which occurred or may occur during the term of this Easement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Grantor's right-of-way if such release or violation was caused by Grantee, its agents, employees, contractors or invitees

- 22 Neither termination nor expiration will release either party from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Premises are restored substantially to the condition existing prior to construction of the Crossing (if removal and restoration was requested in writing by Grantor)
- 23 Grantee may not assign all or part of this Easement without the written consent of Grantor. Subject to the foregoing, the terms hereof shall bind and inure to the benefit of the parties, their successors and permitted assigns.
- 24 To facilitate execution, this Easement may be executed in as many counterparts as may be convenient or necessary. It shall not be necessary that the signature or acknowledgement of, or on behalf of, each party, or that the signature of all persons required to bind any party or the acknowledgement of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument.



TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging to Grantee for public use and enjoyment for the purposes aforesaid, and for no other purpose whatsoever subject to the terms and conditions hereinbefore stated for the term stated hereinabove.

IN WITNESS WHEREOF, the said THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY has caused this instrument to be signed by its authorized officer, and the corporate seal affixed on the 27<sup>th</sup> day of July, 200\_

**GRANTOR:**

**THE BURLINGTON NORTHERN AND  
SANTA FE RAILWAY COMPANY**

By, *D. P. Schneider*

D. P. Schneider  
General Director Real Estate

**ATTEST:**

By, *Patricia Zbichorski*

Patricia Zbichorski  
Assistant Secretary



**GRANTEE:**

**THE CITY OF SEATTLE**

By, *Grace Crunican*

Grace Crunican, Director  
Seattle Department of Transportation



STATE OF TEXAS )

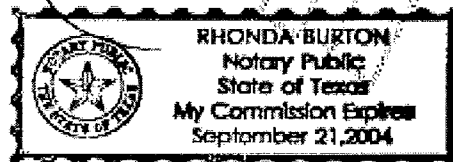
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COUNTY OF TARRANT )

On this 27<sup>th</sup> day of July, 2004, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared D. P. Schneider and Patricia Zbichorski, to me known to be the General Director Real Estate, and Assistant Secretary, respectively, of The Burlington Northern and Santa Fe Railway Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation

Witness my hand and official seal hereto affixed the day and year first above written

Rhonda Burton  
Notary Public in and for the State of Texas  
Residing at Carrollton, Texas  
My appointment expires 9/21/2004



STATE OF WASHINGTON )

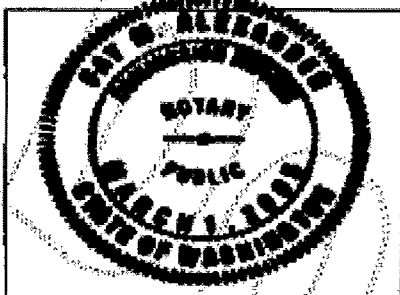
) ss

COUNTY OF KING )

On this 17 day of June, 2004, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Grace Cronican to me known to be the Director of Transportation of The City of Seattle a municipal corporation organized and existing under the laws of the State of Washington that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute the said instrument

Witness my hand and official seal hereto affixed the day and year first above written

Date 6/17/2004



Fay M. Alexander  
NOTARY PUBLIC in and for the State of  
Washington residing at Seattle Washington

My commission expires 3-1-2005

PRINT NAME Fay M. Alexander

## Exhibit A to Easement

### Parcel H (BNSF Crossing Easement)

The Southwesterly 18 feet of the Northwesterly 20 feet of Lot 13, Block 100, Gilman's Addition to the City of Seattle, according to the plat thereof recorded in Volume 5 of Plats, page 93, Records of King County, Washington,

TOGETHER WITH the Northwesterly 20 feet of Lot 14 of said Block 100,

TOGETHER WITH Northeasterly 6 feet of Northwesterly 20 feet of Lot 15 of said Block 100,

TOGETHER WITH that portion of the Burlington Northern and Santa Fe Railway Company's original 50 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 250 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across the H A Smith Donation Claim No 41 in Sections 13 and 14, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington, lying between the Southeasterly line of said right-of-way and a line drawn parallel or concentric with and distant 14 feet northwesterly of, as measured at right angles or radially from said Main Track Centerline, and bounded on the Northeast by the production northwesterly of the Northeasterly line of the Southwesterly 18 feet of said Lot 13 and bounded on the Southwest by the production northwesterly of the Southwesterly line of Northeasterly 6 feet of said Lot 15,

containing an area of 3,186 square feet, more or less,

situate in the City of Seattle, County of King, State of Washington



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KING COUNTY, WA  
PAGE 001 OF 001  
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KING COUNTY, WA

E2064027

08/20/2004 13:56  
KING COUNTY, WA  
TAX \$0.00  
SALE \$0.00

PAGE 001 OF 001

500A King County Real Estate Services  
500 Fourth Avenue  
Seattle, WA 98104

### WARRANTY DEED

GRANTOR - KING COUNTY  
GRANTEE - City of Seattle  
LEGAL --- Gilman's Addition, Lots 12-14, blk 100  
TAX ACCT. 277110-1465

The Grantor herein, KING COUNTY, a political subdivision of the State of Washington, for and in consideration of FIVE HUNDRED FIFTY ONE 43/100 DOLLARS (\$551.43) pursuant to King County Code 4.56.140, does hereby convey and warrant unto the CITY OF SEATTLE, a municipal corporation of the State of Washington, all interest in the following described real property, situated in the County of King, State of Washington:

Lots 12, 13 and 14, Block 100, Gilman's Addition, according to the plat thereof recorded in Volume 5 of Plats, Page 93, in King County, Washington, LESS northern Pacific Right of Way, AND LESS portion condemned by City of Seattle

Dated this 20<sup>th</sup> day of August, 2004

KING COUNTY, WASHINGTON

BY

TITLE Real Estate Manager

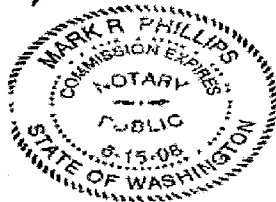
STATE OF WASHINGTON )

) SS

COUNTY OF KING )

I certify that Calvin Hoggard signed this instrument, on oath stated that he was authorized by the King County Executive to execute the instrument, and acknowledged it as the Manager-Real Estate Services of King County, Washington to be the free and voluntary act of said County for the uses and purposes mentioned in the instrument

Dated 8/20/04



Mark R. Phillips  
NOTARY PUBLIC in and for the State  
of Washington, residing at Bellevue  
My appointment expires 6/15/08



After Recording Return to:  
Michael McCormack  
Jameson Babbitt Stites & Lombard  
999 Third Avenue  
Suite 1900  
Seattle, Washington 98104

## CROSSING EASEMENT AGREEMENT

Reference numbers of related documents:  
**20030103001725**

Grantor: THE CITY OF SEATTLE

Grantee(s):

1. FOSS MARITIME COMPANY
2. FRC/BN EWING STREET LLC

Legal Description:

1. Abbreviated form: Portions of Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington.
2. Additional legal description is on Exhibits A, B-1, B-2 and C of document.

Assessor's Property Tax Parcel Account Number(s): Portions of 970360-0010-06, 132503-9012-00, 132503-9006-08.

THIS CROSSING EASEMENT AGREEMENT (the "**Agreement**") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, among THE CITY OF SEATTLE, a municipal corporation of the State of Washington ("**City**"); FRC/BN EWING STREET LLC, a Washington limited liability company ("**FRC**"); and FOSS MARITIME COMPANY, a Washington corporation ("**Foss**").

### RECITALS

**A.** The City owns certain real property in Seattle, King County, Washington, which is more fully described in Exhibit A attached hereto (the "**Trail Property**"). The City acquired the Trail Property for use as part of its public trail system. The Trail Property is a portion of a rail corridor formerly owned by The Burlington Northern and Santa Fe Railway Company ("**BNSF**").

**B.** FRC owns certain real property in Seattle, King County, Washington, which is more fully described in Exhibit B-1 (the "**FRC Property**"). Portions of the FRC Property are adjacent to real property owned by Foss. Foss is an affiliate of FRC. The property owned by Foss is described in Exhibit B-2 (the "**Foss Property**").

ATTACHMENT 6



C. The City is willing to grant a crossing easement to FRC and Foss over a portion of the Trail Property to provide ingress to and egress from the Foss Property and the FRC Property and to grant a utilities easement under a portion of the Trail Property for the benefit of the Foss Property and the FRC Property, both subject to the terms and conditions set forth in this Agreement and subject to the future restoration of rail service as set forth in Section 8 below.

D. By executing and recording this Agreement, the parties desire to replace and supersede in its entirety that certain Easement between BNSF, FRC and Foss recorded January 3, 2003 under Recording No. 20030103001725, Department of Records and Elections, King County, Washington ("**BNSF/Foss Easement**") as set forth in Section 9 below.

E. The parties desire to set forth their respective understandings and agreements regarding the foregoing in the form of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City, FRC and Foss agree as follows:

**1. Crossing Easement.** The City hereby grants and quit claims to FRC and Foss, for each and the heirs, successors and assigns of each, a perpetual non-exclusive crossing easement over and across the areas collectively described in Exhibit C as the "**Crossing Area**" for the purposes of permitting (a) vehicular and pedestrian ingress to and egress from the FRC Property and the Foss Property ("**Crossing**") and (b) the construction, installation, maintenance, repair, and replacement of pavement and necessary drainage facilities ("**Crossing Improvements**") and for no other purpose. Parking of vehicles and placing equipment or objects or obstacles of any sort in the Crossing Area are expressly prohibited. The easement granted pursuant to this Section 1 shall be appurtenant to the FRC Property and the Foss Property.

**2. Utilities Easement.** The City hereby grants and quit claims to FRC and Foss, for each and the heirs, successors and assigns of each, a perpetual non-exclusive easement beneath the ground surface of the Crossing Area for the installation and maintenance of utilities to serve the FRC Property and the Foss Property ("**Utilities Easement**"). This grant is subject to the rights of all existing utilities in or crossing the Crossing Area and to the right of the City to install utilities in the future. In the event that utilities installed by FRC, Foss or their heirs, successors or assigns must be relocated to accommodate the needs of the City, such relocation shall be at the sole cost of FRC and Foss or their heirs, successors and assigns, as applicable. The easement granted pursuant to this Section 2 shall be appurtenant to the FRC Property and the Foss Property.

**3. Design and Construction.**

**3.1 Crossing.** FRC and Foss shall design, prepare plans and specifications for, obtain all applicable permits for and construct, at no cost to the City, the surface pavement, base and subgrade of the Crossing. FRC and Foss shall consult with the City in the course of preparing plans to incorporate all requirements and specifications of the City and standards applicable to public trail facilities. Construction of the Crossing shall not begin until the City has



approved the final plans and specifications, FRC and Foss have obtained all necessary permits, and FRC and Foss have complied with all requirements, statutes, rules and regulations applicable to the design and construction of the Crossing. FRC and Foss agree, for themselves, their heirs, successors and assigns, that in the event they decide to construct Crossing Improvements prior to such time as the City constructs a trail on the Trail Property, they shall be responsible for all costs associated with grade and drainage changes in the Crossing Area related to trail construction.

### **3.2 Utilities.**

**3.2.1 General.** Prior to installing any utilities under the Crossing Area, FRC and Foss shall submit to the City plans for such installation and no installation shall begin until the City has approved the plans, FRC and Foss have obtained all necessary permits, and FRC and Foss have complied with all applicable requirements, statutes, rules and regulations. All utilities shall be installed at a depth required by the City. All work shall be completed without cost to the City and without delay by qualified, licensed and bonded contractor( s), and, upon completion of such work the Crossing Area shall be restored to a condition that is fit and safe for public travel. At request of the City, FRC's and Foss's qualified contractor(s) shall post a bond(s) for the benefit of the City guaranteeing completion of repairs and restoration of the Crossing Area. Upon request of the City, FRC and Foss shall provide as-built drawings showing the exact location and depth of the utilities.

**3.2.2 Environmental Release.** FRC and Foss hereby release the City from any and all claims, demands, obligations, causes of action and liability arising out of or that arise in whole or in part, directly or indirectly, from or in connection with the presence on, in or under the Crossing Area of any Hazardous Material encountered by FRC or Foss in connection with the installation of utilities within the Crossing Area. As used herein, the term "**Hazardous Material**" means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials or (viii) radioactive materials; and the term "**Environmental Law(s)**" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S. C. Sections 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq., the Clean Water Act, 33 U.S.C. Sections 1251 et seq., the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 and 99-563; the occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 et seq.; the Clear Air Act, as amended, 42 U.S.C. 7401 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. § 201 et seq.; the Hazardous Waste Cleanup Act (RCW 70.105.010, et seq.); the Model Toxics Control Act of the State of Washington (RCW 70.105D, et seq.), as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state or local law, statute, rule, regulation or ordinance which regulates or proscribes the use, storage, disposal, presence, cleanup, transportation or release or threatened release into the environment of Hazardous Material.



**4. Maintenance and Repair.** FRC and Foss shall maintain the Crossing in safe and clean condition, and shall repair or renew the surface pavement to keep the Crossing fit and safe for public travel, all at no cost to the City. Except in case of emergency or request of the City, prior to any maintenance, repair, alteration or any other work in or under the Crossing Area, FRC and Foss shall submit to plans for such maintenance, repair, alteration or other work and a detour plan with appropriate signage for the City's approval at least thirty (30) days prior to the date that FRC and Foss desire to begin work. All work shall be completed without delay by qualified, licensed and bonded contractor(s), and upon completion of such work the Crossing Area shall be fit and safe for public travel. At the request of the City, FRC's and Foss's qualified contractor(s) shall post a bond(s) for the benefit of the City guaranteeing completion of repairs and restoration of the Crossing Area.

**5. Use of Crossing Area.** The City retains a continuing right to use the Crossing Area for any purpose that is not inconsistent with the grants contained in this Agreement, including use by the public for trail purposes. The City also retains the right to control traffic flow and traffic signage in connection with the Crossing. All persons using the Crossing for ingress to and egress from the FRC Property and the Foss Property will be required to stop and to yield to users of the Trail Property. FRC and Foss understand that at such time as the City improves the Trail Property, portions of the Crossing Area may need to be closed temporarily. The City agrees to use its best efforts to minimize inconvenience to users of the Crossing and, subject to FRC's and Foss's responsibility for certain costs related to grade and drainage changes, to repair any damage to pavement in the Crossing Area caused by the City.

**6. Indemnification.** To the full extent permitted by applicable law, FRC and Foss, jointly and severally, agree on behalf of themselves and their heirs, successors and assigns to indemnify, defend and save harmless the City, its officers, employees, successors and assigns from any and all claims, demands, loss, damage, expense (including attorneys' fees), liens, charges and liability of every kind and description, including personal injury and death and for any damage to or loss of or destruction of property whatsoever arising from the exercise of any of the rights granted herein (including any exercise by the heirs, successors, assigns, employees, agents, contractors, licensees or invitees of either).

FRC and Foss, jointly and severally, on behalf of themselves and their heirs, successors and assigns, specifically and expressly waive any immunity they or any of them may have under Title 51 of the Revised Code of Washington to the extent necessary to provide the City, its successors and assigns, with a full and complete indemnity from claims made by employees of FRC or Foss or employees of their heirs, successors and assigns, and agree that such waiver of immunity was mutually negotiated by the parties.

**7. Insurance.** FRC and Foss shall at all times, at their sole cost and expense, keep in full force and effect policies of commercial general liability insurance insuring against any and all claims or liability arising out of the rights or obligations set forth in this Agreement, in commercially reasonable amounts and with endorsements acceptable to the City's Risk Manager (provided the same are available at commercially reasonable rates), covering bodily injury, death and damage to property and the indemnification provisions set forth in Section 6 above.



**8.     Reactivation of Rail.** In the event rail is reactivated in the area that includes the Crossing Area, the owners of the FRC Property and the Foss Property at the time shall be solely responsible for taking all measures necessary, required, or imposed by the railroad (or by a tribunal with jurisdiction) so as not to impair or unduly burden rail reactivation and rail service, and said owners shall indemnify, defend (at the election of the City) and hold the City harmless from all liability and costs, including attorneys' fees, in the event of any litigation involving the allocation of costs or allegations of impairment of rail use resulting from rail reactivation affecting the Crossing Area. The City shall in no event be liable to the owners of the FRC Property or the Foss Property for any claims relating to or arising out of rail reactivation, including without limitation its impact on the Crossing Area, and the owners of the FRC Property and the Foss Property shall indemnify, defend (at the election of the City) and hold harmless the City for any such claims, including for reasonable attorneys' fees in defending against such claims.

**9.     Replaces and Supersedes BNSF/Foss Easement.** This Crossing Easement Agreement replaces and supersedes in its entirety the BNSF/Foss Easement defined in Recital D. Upon the recordation of this Agreement, the BNSF/Foss Easement shall, without further act, deed or recordation of additional instruments, be deemed terminated as between the parties to this Agreement.

**10.    Default; Remedies.** In the event of a failure of a party to perform an obligation imposed upon that party, and such failure shall continue for a period of thirty (30) business days after receipt of a written notice given by the other party (or, if such failure is such that it cannot reasonably be performed within such thirty (30) business day period, then the failing party shall have a reasonable period to perform such obligation if the failing party has commenced the performance within such thirty (30) business day period and diligently pursues the same to completion) then the party who has failed to perform an obligation under this Agreement shall be in default. In the event of a default under this Agreement, the non-defaulting party shall have the right to seek any or all of its remedies under law or in equity, including, in case the non-defaulting party is the owner of the Trail Property, the remedy of terminating this Agreement.

**11.    General Provisions.**

**11.1   Controlling Law; Venue.** The interpretation and performance of this Agreement shall be governed by the laws of the State of Washington. The venue for any action between the parties regarding the subject matter of this Agreement shall be in King County, Washington.

**11.2   Severability.** If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

**11.3   Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Crossing and Utilities Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

**11.4   Transfer or Termination of Rights and Obligations.** Upon transfer or termination of a party's interest in all of the Crossing Area, the transferring or terminating party's



rights and obligations under this Agreement terminate with respect to the Crossing Area, except that liability for acts or omissions occurring prior to transfer or termination shall survive such transfer or termination. FRC and Foss, their heirs, successors and assigns, shall give notice to the City of any transfer of interest in the Crossing Area no less than thirty (30) days prior to such transfer.

**11.5 Waiver.** The waiver by any party of the breach of any term set forth herein shall not be deemed to be a waiver of any subsequent breach of the same term or any other term.

**11.6 Captions.** The captions in this Agreement have been inserted solely for convenience of reference and are not a part of this Agreement and shall have no effect upon construction or interpretation.

**11.7 Notice.** Any notice or other communications given hereunder shall be deemed sufficient if in writing and delivered personally to the addressee, or sent by certified or registered mail, return receipt requested, addressed as follows, or to such other address as may be designated by the addressee by written notice to the other parties:

To the City:	Director of Transportation The City of Seattle 700 Fifth Avenue Suite 3900 Seattle, WA 98104
With a copy to:	Seattle City Attorney's Office 600 Fourth Avenue Fourth Floor P.O. Box 94769 Seattle, WA 98124-4769
To FRC:	P.O. Box 94449 Seattle, WA 98124 Attention: Chief Executive Officer
To Foss:	660 West Ewing Street Seattle, WA 98119-1587 Attention: General Counsel

**11.8 Compliance with Laws.** FRC and Foss shall at all times exercise the rights herein granted to either in compliance with all of the requirements of the statutes, ordinances, rules and regulations of all public authorities having jurisdiction and as those statutes, orders, rules and regulations are from time to time amended.

**11.9 Runs With the Land; Successors and Assigns.** The rights and obligations set forth in this Agreement shall inure to the benefit of and be binding upon (i) the City, (ii) FRC and FRC's heirs, successors, assigns with respect to the FRC Property, and (iii) Foss and Foss' successors, assigns with respect to the Foss Property. The parties further agree



that the easements, agreements and covenants set forth herein shall be considered servitudes that run with the land, and the rights and obligations of the parties shall inure to the benefit of and be binding upon their respective heirs, successors and assigns. As used in this Agreement, the City means the City and its successors and assigns; FRC means FRC and its heirs, successors and assigns; and Foss means Foss and its successors and assigns.

**11.10 As Is.** FRC and Foss, for themselves, their heirs, successors and assigns, accept the Crossing Area in "**as is**" condition.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY :**

THE CITY OF SEATTLE,  
a Washington municipal corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**FRC:**

FRC/BN EWING STREET LLC,  
a Washington limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**FOSS:**

FOSS MARITIME COMPANY,  
a Washington corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**LIST OF EXHIBITS:**

Exhibit A – Legal Description of Trail Property  
Exhibit B-1 – Legal Description of FRC Property  
Exhibit B-2 – Legal Description of Foss Property  
Exhibit C – Legal Description of Crossing Area



STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of **THE CITY OF SEATTLE**, a municipal corporation, to be the free and voluntary act and deed of such municipal corporation for the uses and purposes mentioned in the instrument.

Date: \_\_\_\_\_

(seal or stamp)

\_\_\_\_\_  
Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the \_\_\_\_\_ of \_\_\_\_\_, to me known to be managing member of **FRC/BN EWING STREET LLC**, a Washington limited liability company, to be the free and voluntary act and deed of such limited liability company for the uses and purposes mentioned in the instrument.

Date: \_\_\_\_\_

(seal or stamp)

\_\_\_\_\_  
Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_

My commission expires \_\_\_\_\_

STATE OF WASHINGTON     )  
  ) ss.  
COUNTY OF KING         )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and





acknowledged it as the \_\_\_\_\_ of **FOSS  
MARITIME COMPANY**, a Washington corporation, to be the free and voluntary act and deed of  
such corporation for the uses and purposes mentioned in the instrument.

Date: \_\_\_\_\_

(seal or stamp)

\_\_\_\_\_  
Notary Public in and for the State of Washington,  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_



## **EXHIBIT A TO CROSSING EASEMENT AGREEMENT**

### **LEGAL DESCRIPTION OF TRAIL PROPERTY**

That portion of the Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington, lying between 2 lines drawn parallel or concentric with and distant, respectively, 9.0 feet northeasterly and 21 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast by a line drawn at right angles or radially from said Main Track Centerline and passing through a point distant 50 feet northwesterly, as measured along said Main Track Centerline, from the production south of the Centerline of 8<sup>th</sup> Avenue West (originally platted as Minor Street), as established in the plat of Ross Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 96, Records of King County, Washington, and bounded on the Northwest by the production south of the Centerline of Jesse Avenue West (originally platted as Jesse Street), as established by said plat of Ross Addition to the City of Seattle;

TOGETHER WITH that portion of said Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across said Government Lots 3 and 5 of said Section 13, lying between 2 lines drawn parallel or concentric with and distant, respectively, 9.0 feet northeasterly and 26 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast by said production south of the Centerline of Jesse Avenue West, and bounded on the Northeast by a line drawn at right angles or radially from said Main Track Centerline and passing through a point distant 165 feet northwesterly, as measured along said Main Track Centerline, from said production south of said Centerline of Jesse Avenue West;

situate in the City of Seattle, County of King, State of Washington.

Containing 27,289 Square Feet, More or Less

That portion of the Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington, lying between 2 lines drawn parallel or concentric with and distant, respectively, 8.5 feet southwesterly and 35 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast and on the Northwest by lines drawn at right angles or radially from said Main Track Centerline and passing through respective points distant 165 feet northwesterly, as measured along said Main Track Centerline, and 353 feet northwesterly, as measured along said Main Track Centerline, from the production south of the Centerline of Jesse Avenue West (originally platted as Jesse Street), as established in the



plat of Ross Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 96, Records of King County, Washington;

TOGETHER WITH that portion of said Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across said Government Lots 3 and 5 of said Section 13, lying between 2 lines drawn parallel or concentric with and distant, respectively, 8.5 feet southwesterly and 11.0 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast by a line drawn at right angles or radially from said Main Track Centerline and passing through a point distant 353 feet northwesterly, as measured along said Main Track Centerline, from the production south of said Centerline of Jesse Avenue West and bounded on the Northwest by the South margin of West Ewing Place, as said South margin was established by Ordinance 15923 of The City of Seattle;

containing an area of 5,576 square feet, more or less;

situate in the City of Seattle, County of King, State of Washington.



## **EXHIBIT B-1 TO CROSSING EASEMENT AGREEMENT**

### **LEGAL DESCRIPTION OF FRC PROPERTY**

#### **PARCEL A**

THE NORTHEASTERLY 40.0 FEET OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S ORIGINAL 100 FOOT WIDE LAKE UNION LINE RIGHT-OF-WAY (FORMERLY SEATTLE, LAKE SHORE AND EASTERN RAILWAY COMPANY RIGHT-OF-WAY), BEING 50.0 FEET WIDE ON EACH SIDE OF SAID RAILWAY COMPANY'S MAIN TRACK CENTERLINE, AS ORIGINALLY LOCATED AND CONSTRUCTED UPON, OVER AND ACROSS GOVERNMENT LOTS 3 AND 5 AND THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON; LYING BETWEEN 2 LINES DRAWN PARALLEL OR CONCENTRIC WITH AND DISTANT, RESPECTIVELY, 10.0 FEET AND 50.0 FEET NORTHEASTERLY, AS MEASURED AT RIGHT ANGLES OR RADIAL FROM SAID MAIN TRACK CENTERLINE; AND BOUNDED ON THE NORTHWEST BY A LINE DRAWN PARALLEL WITH AND DISTANT 50.0 FEET WESTERLY OF THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY MARGIN OF EIGHTH AVENUE WEST, ACCORDING TO THE RECORDED PLAT OF ROSS SECOND ADDITION TO THE CITY OF SEATTLE, RECORDED IN VOLUME 2 OF PLATS, PAGE 140; AND BOUNDED ON THE SOUTHEAST BY A LINE THAT IS PARALLEL WITH AND DISTANT 16.0 FEET NORTHWESTERLY, AS MEASURED AT RIGHT ANGLES FROM THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF LOT 25, BLOCK 22 ACCORDING TO THE RECORDED PLAT OF ROSS ADDITION TO SEATTLE, RECORDED IN VOLUME 2 OF PLATS, PAGE 96;

TOGETHER WITH THE NORTHEASTERLY 41.0 FEET OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S ORIGINAL 100 FOOT WIDE LAKE UNION LINE RIGHT-OF-WAY (FORMERLY SEATTLE, LAKE SHORE AND EASTERN RAILWAY COMPANY RIGHT-OF-WAY), BEING 50.0 FEET WIDE ON EACH SIDE OF SAID RAILWAY COMPANY'S MAIN TRACK CENTERLINE, AS ORIGINALLY LOCATED AND CONSTRUCTED UPON, OVER AND ACROSS GOVERNMENT LOTS 3 AND 5 AND THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING BETWEEN 2 LINES DRAWN PARALLEL OR CONCENTRIC WITH AND DISTANT, RESPECTIVELY, 9.0 FEET AND 50.0 FEET NORTHEASTERLY, AS MEASURED AT RIGHT ANGLES OR RADIAL FROM SAID MAIN TRACK CENTERLINE; AND BOUNDED ON THE SOUTHEAST BY A LINE DRAWN PARALLEL WITH AND DISTANT 50.0 FEET WESTERLY OF THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY MARGIN OF EIGHTH AVENUE WEST, ACCORDING TO THE RECORDED PLAT OF ROSS SECOND ADDITION TO THE CITY OF SEATTLE, RECORDED IN VOLUME 2 OF PLATS, PAGE 140; AND BOUNDED ON THE NORTHWEST BY THE SOUTHERLY MARGIN OF WEST EWING PLACE AS ESTABLISHED PURSUANT TO CITY OF SEATTLE ORDINANCE NO. 15923.

CONTAINING 63,479 SQUARE FEET, MORE OR LESS.



## EXHIBIT B-1 (ct'd)

### Description of FRC Property

#### PARCEL B

THE NORTHEASTERLY 24.0 FEET OF THE SOUTHWESTERLY 39.0 FEET OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S ORIGINAL 100 FOOT WIDE LAKE UNION LINE RIGHT-OF-WAY (FORMERLY SEATTLE, LAKE SHORE AND EASTERN RAILWAY COMPANY RIGHT-OF-WAY), BEING 50.0 FEET WIDE ON EACH SIDE OF SAID RAILWAY COMPANY'S MAIN TRACK CENTERLINE, AS ORIGINALLY LOCATED AND CONSTRUCTED UPON, OVER AND ACROSS GOVERNMENT LOTS 3 AND 5 AND THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING BETWEEN 2 LINES DRAWN PARALLEL OR CONCENTRIC WITH AND DISTANT RESPECTIVELY, 11.0 FEET AND 35.0 FEET SOUTHWESTERLY, AS MEASURED AT RIGHT ANGLES OR RADIAL FROM SAID MAIN TRACK CENTERLINE, AND BOUNDED ON THE NORTHWEST BY A LINE DRAWN PARALLEL WITH AND DISTANT 50.0 FEET WESTERLY OF THE PRODUCTION NORTHEASTERLY OF THE NORTHWESTERLY MARGIN OF EIGHTH AVENUE WEST, ACCORDING TO THE RECORDED PLAT OF ROSS SECOND ADDITION TO THE CITY OF SEATTLE, RECORDED IN VOLUME 2 OF PLATS, PAGE 140, AND BOUNDED ON THE SOUTHEAST BY A LINE THAT IS PARALLEL OR CONCENTRIC WITH AND DISTANT 16.0 FEET NORTHWESTERLY, AS MEASURED AT RIGHT ANGLES OR RADIAL FROM THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF LOT 25, BLOCK 22 ACCORDING TO THE RECORDED PLAT OF ROSS ADDITION TO SEATTLE, RECORDED IN VOLUME 2 OF PLATS, PAGE 96;

TOGETHER WITH THE NORTHEASTERLY 14.0 FEET OF THE SOUTHWESTERLY 29.0 FEET OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY'S ORIGINAL 100 FOOT WIDE LAKE UNION LINE RIGHT-OF-WAY, (FORMERLY SEATTLE, LAKE SHORE AND EASTERN RAILWAY COMPANY RIGHT-OF-WAY), BEING 50.0 FEET WIDE ON EACH SIDE OF SAID RAILWAY COMPANY'S MAIN TRACK CENTERLINE, AS ORIGINALLY LOCATED AND CONSTRUCTED UPON, OVER AND ACROSS GOVERNMENT LOTS 3 AND 5 AND THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 25 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON, LYING BETWEEN 2 LINES DRAWN PARALLEL OR CONCENTRIC WITH AND DISTANT, RESPECTIVELY, 21.0 FEET AND 35.0 FEET SOUTHWESTERLY, AND MEASURED AT RIGHT ANGLES OR RADIAL FROM SAID MAIN TRACK CENTERLINE, AND BOUNDED ON THE NORTHWEST BY THE PRODUCTION NORTHEASTERLY OF THE CENTERLINE OF JESSE AVENUE WEST, ACCORDING TO THE RECORDED PLAT OF ROSS SECOND ADDITION TO THE CITY OF SEATTLE, RECORDED IN VOLUME 2 OF PLATS, PAGE 140, AND BOUNDED ON THE SOUTHEAST BY A LINE DRAWN PARALLEL WITH AND DISTANT 50.0 FEET WESTERLY OF THE PRODUCTION NORTHEASTERLY OF THE NORTHWESTERLY MARGIN OF EIGHTH AVENUE WEST, ACCORDING TO SAID PLAT OF ROSS SECOND ADDITION TO THE CITY OF SEATTLE.

CONTAINING 18,848 SQUARE FEET, MORE OR LESS.

## **EXHIBIT B-2 TO CROSSING EASEMENT AGREEMENT**

### **LEGAL DESCRIPTION OF FOSS MARITIME COMPANY PROPERTY**

Lots 7 through 14 in Block 14, TOGETHER WITH those portions of vacated West Brawley Street, West Blewett Street and Jesse Avenue North adjoining, which upon vacation, attached to said property by operation of law;

EXCEPT that a portion of said Lot 14 lying Northwesterly of a line extended from the most Easterly corner of said Lot 14 to the most Westerly corner thereof;

Lots 1 through 29 in Block 15, TOGETHER WITH those portions of vacated West Brawley Street, Jesse Avenue North and Eighth Avenue West adjoining, which upon vacation, attached to said property by operation of law;

Lots 1 through 13 in Block 16, TOGETHER WITH those portions of vacated West Brawley Street, Jesse Avenue North and Eighth Avenue West adjoining, which upon vacation, attached to said property by operation of law;

Except that portion thereof condemned in King County Superior Court Cause No. 91942 for canal right-of-way;

Lots 1 through 14 in Block 17, TOGETHER WITH that portion of vacated West Brawley Street and Eighth Avenue West adjoining, which upon vacation, attached to said property by operation of law;

Lots 1 through 12 in Block 18, TOGETHER WITH that portion of vacated West Brawley Street and Eighth Avenue West adjoining, which upon vacation, attached to said property by operation of law;

Except that portion thereof condemned in King County Superior Court Cause No. 21942 for canal right-of-way;

Lots 1, 2, 3, 4, 5, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31 and 32 in Block 22, TOGETHER WITH that portion of vacated West Blewett Street, West Ewing Street and Eighth Avenue West adjoining, which upon vacation, attached to said property by operation of law.

Lots 1 through 32 in Block 23, TOGETHER WITH those portions of vacated West Blewett Street, West Ewing Street, Jesse Avenue North, and Eighth Avenue West adjoining, which upon vacation, attached to said property by operation of law;

Lots 12 through 25 in Block 24, TOGETHER WITH those portions of West Blewett Street, West Ewing Street and Jesse Avenue North adjoining, which upon vacation, attached to said property by operation of law;

ALL in Ross Addition to the City of Seattle, as per plat recorded in Volume 2 of Plats, Page 96, records of King County;  
Situate in the City of Seattle, County of King, State of Washington.



## **EXHIBIT C TO CROSSING EASEMENT AGREEMENT**

### **LEGAL DESCRIPTION OF CROSSING AREA**

#### **40-FOOT EASEMENT NORTHWEST OF JESSE AVENUE WEST**

That portion of The Burlington Northern and Santa Fe Railway Company's Original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track centerline, as originally located and constructed upon over and across Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington, lying between 2 lines drawn parallel with and distant, respectively, 9.0 feet Northeasterly and 35 feet Southwesterly of, as measured at right angles from said Main Track centerline, and bounded on the Northwest by a line drawn at right angles from said Main Track centerline and passing through a point distant 165 feet Northwesterly, as measured along said Main Track centerline, from the Northerly production of the centerline of Jesse Avenue West, as established in the Plat of Ross Second Addition to the City of Seattle, according to the Plat thereof recorded in Volume 2 of Plats, Page 140, Records of King County, Washington, and bounded on the Southeast by a line drawn at right angles from said Main Track centerline and passing through a point distant 125 feet Northwesterly, as measured along said Main Track centerline, from the Northerly production of the centerline of said Jesse Avenue West

Containing 1,760 square feet, more or less

#### **50-FOOT EASEMENT SOUTHEAST OF JESSE AVENUE WEST**

That portion of The Burlington Northern and Santa Fe Railway Company's Original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track centerline, as originally located and constructed upon over and across Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington, lying between 2 lines drawn parallel with and distant, respectively, 9.0 feet Northeasterly and 21 feet Southwesterly of, as measured at right angles from said Main Track centerline, and bounded on the Southeast by a line drawn at right angles from said Main Track centerline and passing through a point distant 297 feet Southeasterly, as measured along said Main Track centerline, from the Northerly production of the centerline of Jesse Avenue West, as established in the Plat of Ross Second Addition to the City of Seattle, according to the Plat thereof recorded in Volume 2 of Plats, Page 140, Records of King County, Washington, and bounded on the Northwest by a line drawn at right angles from said Main Track centerline and passing through a point distant 247 feet Southeasterly, as measured along said Main Track centerline, from the Northerly production of the centerline of said Jesse Avenue West

Containing 1,500 square feet, more or less



AFTER RECORDING RETURN TO:

Seattle Department of Transportation  
Capital Projects  
Attention: Stuart Goldsmith  
700 5<sup>th</sup> Avenue  
Key Tower, Suite 3900  
Seattle, Washington 98104-5043

**Document Title:** Quitclaim Deed

**Grantor:** Foss Maritime Company  
FRC/BN Ewing Street LLC

**Grantee:** The City of Seattle

**Legal Description:**

Abbreviated Legal Description: Portions of Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East, W.M in King County, Washington

Additional Legal Description: Exhibit A to this document

**Assessor's Tax Parcel Nos.:** \_\_\_\_\_

**Reference Nos. of Documents Released or Assigned:** N/A

**QUITCLAIM DEED**

The Grantors, Foss Maritime Company, a Washington corporation, and FRC/BN Ewing Street LLC, a Washington limited liability company, for and in consideration of clearing title, hereby convey and quitclaim to The City of Seattle, a municipal corporation, all of their right, title and interest, if any, by whatever means created, in and to the real property described in attached Exhibit A, located in King County, Washington, together with all after acquired title of the Grantors therein, SUBJECT, HOWEVER, to that certain Crossing Easement Agreement recorded under King County recording number \_\_\_\_\_, and the right to use and maintain (consistent with the use and maintenance provisions of the Crossing Easement Agreement) all utility facilities (such as water, side sewer, gas, electrical and telephone lines) existing as of November 4, 2002 that benefit the real property described in Exhibits B-1 and B-2 to the Crossing Easement Agreement.

Dated: \_\_\_\_\_, 200\_\_

**GRANTORS:**

Foss Maritime Company

FRC/BN Ewing Street LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTACHMENT 7**





STATE OF WASHINGTON                    )  
  ) ss.  
COUNTY OF KING                    )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be (or proved to me on the basis of satisfactory evidence) the \_\_\_\_\_ of Foss Maritime Company, a Washington corporation, the Washington corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that \_\_\_ is authorized to execute the said instrument.

IN WITNESS WHEREOF I have hereunder set my hand and official seal day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
\_\_\_\_\_  
PRINT NAME

STATE OF WASHINGTON                    )  
  ) ss.  
COUNTY OF KING                    )

On this \_\_\_\_ day of \_\_\_\_\_, 200\_, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be (or proved to me on the basis of satisfactory evidence) the \_\_\_\_\_ of FRC/BN Ewing Street LLC, a Washington limited liability company, the Washington limited liability company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that \_\_\_ is authorized to execute the said instrument.

IN WITNESS WHEREOF I have hereunder set my hand and official seal day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington  
Residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
\_\_\_\_\_  
PRINT NAME



## EXHIBIT A

### LEGAL DESCRIPTION Description of Trail Property (Phase 2)

That portion of the Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington, lying between 2 lines drawn parallel or concentric with and distant, respectively, 9.0 feet northeasterly and 21 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast by a line drawn at right angles or radially from said Main Track Centerline and passing through a point distant 50 feet northwesterly, as measured along said Main Track Centerline, from the production south of the Centerline of 8<sup>th</sup> Avenue West (originally platted as Minor Street), as established in the plat of Ross Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 96, Records of King County, Washington, and bounded on the Northwest by the production south of the Centerline of Jesse Avenue West (originally platted as Jesse Street), as established by said plat of Ross Addition to the City of Seattle;

TOGETHER WITH that portion of said Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across said Government Lots 3 and 5 of said Section 13, lying between 2 lines drawn parallel or concentric with and distant, respectively, 9.0 feet northeasterly and 26 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast by said production south of the Centerline of Jesse Avenue West, and bounded on the Northeast by a line drawn at right angles or radially from said Main Track Centerline and passing through a point distant 165 feet northwesterly, as measured along said Main Track Centerline, from said production south of said Centerline of Jesse Avenue West;

situate in the City of Seattle, County of King, State of Washington.

Containing 27,289 Square Feet, More or Less

That portion of the Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and constructed upon, over and across Government Lots 3 and 5 of Section 13, Township 25 North, Range 3 East, Willamette Meridian, in King County, Washington, lying between 2 lines drawn parallel or concentric with and distant, respectively, 8.5 feet southwesterly and 35 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast and on the Northwest by lines drawn at right angles or radially from said Main Track Centerline and passing through respective points distant 165 feet northwesterly, as measured along said Main Track Centerline, and 353 feet northwesterly, as measured along said Main Track Centerline, from the production south of the Centerline of Jesse Avenue West (originally platted as Jesse Street), as established in the plat of Ross Addition to the City of Seattle, according to the plat thereof recorded in Volume 2 of Plats, page 96, Records of King County, Washington;

TOGETHER WITH that portion of said Burlington Northern and Santa Fe Railway Company's original 100 foot wide Lake Union Line right-of-way (formerly Seattle, Lake Shore and Eastern Railway Company right-of-way) being 50.0 feet wide on each side of said Railway Company's Main Track Centerline, as originally located and



constructed upon, over and across said Government Lots 3 and 5 of said Section 13, lying between 2 lines drawn parallel or concentric with and distant, respectively, 8.5 feet southwesterly and 11.0 feet southwesterly of, as measured at right angles or radially from said Main Track Centerline; and bounded on the Southeast by a line drawn at right angles or radially from said Main Track Centerline and passing through a point distant 353 feet northwesterly, as measured along said Main Track Centerline, from the production south of said Centerline of Jesse Avenue West and bounded on the Northwest by the South margin of West Ewing Place, as said South margin was established by Ordinance 15923 of The City of Seattle;

containing an area of 5,576 square feet, more or less;

situate in the City of Seattle, County of King, State of Washington.



**FISCAL NOTE FOR CAPITAL PROJECTS ONLY**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>DOF Analyst/Phone:</b>
Seattle Department of Transportation	Larry Huggins 684-5001	Jennifer Devore 615-1328

**Legislation Title:**

AN ORDINANCE relating to the Ship Canal Trail; accepting deeds and easements; transferring jurisdiction of certain real property near the Ballard Bridge from the Fleets and Facilities Department to Seattle Department of Transportation; authorizing the execution and delivery of deeds of right to the State of Washington; authorizing the acquisition of property and acceptance of deeds; and authorizing the execution and delivery of a crossing easement agreement.

**Summary and background of the Legislation:**

The purpose of this legislation is to complete the acquisition of property needed to complete Lake Union Ship Canal Trail. Phase 1 of the Trail, which extends from the Fremont Bridge to 6<sup>th</sup> Avenue West, was completed in 1996. Phase 2 will extend westward from 6<sup>th</sup> Avenue and connect to the existing bicycle path along West Emerson Street. This is a critical missing link in Seattle's Urban Trails System. Once built, it will be possible to bicycle from Redmond to downtown Seattle almost entirely by trail.

The City has previously, under authority of Ordinances 117468, 117618 and 118343, accepted real property and property rights between the Fremont Bridge and the Ballard Bridge for Phases I and II of the Lake Union Ship Canal Trail, including a Quitclaim Deed from Burlington Northern Railroad Company for Phase I of the Lake Union Ship Canal Trail. Certain property unintentionally omitted from the Quitclaim Deed is needed to extend the trail. That deed has been corrected and is part of the current ordinance.

In addition to the aforementioned correction deed, the proposed ordinance accepts, or authorizes the SDOT Director to accept, the deeds for the remaining real property acquired for the purpose of completing the Lake Union Ship Canal Trail. This property has been or will be acquired from BNSF Railway, Argonaut Properties, Inc., King County, the Port of Seattle, and also includes a transfer of jurisdiction of a small parcel from Fleets and Facilities to SDOT. The SDOT Director is also authorized to acquire additional real property from BNSF Railway and accept such deeds. The ordinance also includes the acceptance of a quitclaim deed from Foss Maritime and FRC/BN Ewing Street LLC in exchange for replacing certain railroad crossing easements with easements acceptable to the City. Lastly, the ordinance includes the delivery of deeds of right to the State of Washington, a requirement of the Interagency Committee for Outdoor Recreation (IAC), which provided funding for these acquisitions



Project Name:	Project I.D.	Project Location:	Start Date:	End Date
Lake Union Ship Canal Trail	TC327000	W. Nickerson St.	1 <sup>st</sup> Qtr 1990	2 <sup>nd</sup> Qtr 2008

- Please check any of the following that apply:

\_\_\_\_\_ **This legislation creates, funds, or anticipates a new CIP Project.** (Please note whether the current CIP is being amended through this ordinance, or provide the Ordinance or Council Bill number of the separate legislation that has amended/is amending the CIP.)

\_\_\_\_\_ **This legislation does not have any financial implications.** (Stop here and delete the remainder of this document prior to saving and printing.)

X **This legislation has financial implications.** (Please complete all relevant sections that follow.)

**Appropriations:** This table should reflect appropriations that are a direct result of this legislation. In the event that the projects associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below. Finally, if this legislation does not directly change an appropriation, but results in budget authority being moved within a Budget Control Level, or to a Budget Control Level (up to 10%), please explain in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2005 Appropriation	2006 Anticipated Appropriation
<b>TOTAL</b>				

\*See budget book to obtain the appropriate Budget Control Level for your department.

**Notes:** No new appropriations are being made in this ordinance.

**Spending Plan and Future Appropriations for Capital Projects:** Please list the timing of anticipated appropriation authority requests and expected spending plan. In addition, please identify your cost estimate methodology including inflation assumptions, the projected costs of meeting applicable LEED standards, and the percent for art and design as appropriate.

Spending Plan and Budget	2005	2006	2007	2008	2009	2010	Total
Spending Plan	309K	1,790K	1,215K	5K			<b>3,319K</b>
Current Year Appropriation							
Future Appropriations		1,771K	1,215K	5K			<b>2,991K</b>

**Notes:**

**Funding source:** Identify funding sources including revenue generated from the project and the expected level of funding from each source.

<b>Funding Source (Fund Name and Number, if applicable)</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
City Street Fund 10320		41K	513K	5K			<b>559K</b>
Parks Levy Fund 3380	309K	352K					<b>661K</b>
Drainage & Wastewater Fund 44010		20K	300K				<b>320K</b>
Federal Grant		1,377K	402K				<b>1,779K</b>
<b>TOTAL</b>	<b>309K</b>	<b>1,790K</b>	<b>1,215K</b>	<b>5K</b>			<b>3,319K</b>

**Notes:** This proposed legislation has no direct financial implications. It accepts property rights authorized under earlier legislation and paid for with in the existing project budget. The project has been funded and included in the CIP budget for several years.

**Bond Financing Required:** If the project or program requires financing, please list type of financing, amount, interest rate, term and annual debt service or payment amount. Please include issuance costs of 3% in listed amount.

<b>Type</b>	<b>Amount</b>	<b>Assumed Interest Rate</b>	<b>Term</b>	<b>Timing</b>	<b>Expected Annual Debt Service/Payment</b>
N/A					
<b>TOTAL</b>					

**Uses and Sources for Operation and Maintenance Costs for the Project:** Estimate cost of one-time startup, operating and maintaining the project over a six year period and identify each fund source available. Estimate the annual savings of implementing the LEED Silver standard. Identify key assumptions such as staffing required, assumed utility usage and rates and other potential drivers of the facility's cost.

<b>O&amp;M</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>Total</b>
<b>Uses</b>							
Start Up							
On-going							
<b>Sources (itemize)</b>							

**Notes:**

**Periodic Major Maintenance costs for the project:** Estimate capital cost of performing periodic maintenance over life of facility. Please identify major work items, frequency.

Major Maintenance Item	Frequency	Cost	Likely Funding Source
N/A			
<b>TOTAL</b>			

**Funding sources for replacement of project:** Identify possible and/or recommended method of financing the project replacement costs.

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**Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE Impact:** This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Position Title and Department*	Fund Name	Fund Number	Part-Time/Full Time	2005 Positions	2005 FTE	2006 Positions**	2006 FTE**
N/A							
<b>TOTAL</b>							

\* List each position separately

\*\* 2006 positions and FTE are total 2006 position changes resulting from this legislation, not incremental changes. Therefore, under 2006, please be sure to include any continuing positions from 2005.

**Notes:**

- **Do positions sunset in the future?** (If yes, identify sunset date): N/A
- **What is the financial cost of not implementing the legislation:** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented): Without the legislation SDOT will not be able to complete the Lake Union Ship Canal Trail. These right-of-way parcels are necessary to complete design and construction of the final trail segment. Not implementing this legislation would result in the loss of an opportunity that may not be available in the future. The City has already invested significant resources to complete the other sections of the trail.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives** *(Include any potential alternatives to the proposed legislation, including using an existing facility to fulfill the uses envisioned by the proposed project, adding components to or subtracting components from the total proposed project, contracting with an outside organization to provide the services the proposed project would fill, or other alternatives):* The proposed right-of-way legislation is required in order to design and construct the final segment of the Lake Union Ship Canal Trail.

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future?)* No.

- **Other Issues** *(including long-term implications of the legislation):*

**Please list attachments to the fiscal note below:**





# City of Seattle

Gregory J. Nickels, Mayor

## Office of the Mayor

May 10, 2005

Honorable Jan Drago  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

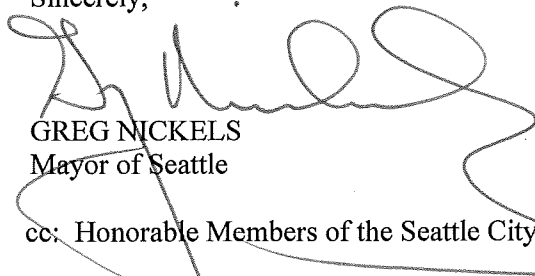
Dear Council President Drago:

I am pleased to transmit the attached proposed Council Bill that will complete the property acquisition phase for the Lake Union Ship Canal Trail.

In 1996, the City of Seattle acquired property as part of Phase I of the Lake Union Ship Canal Trail Project, that allowed the trail to be extended near from the Fremont Bridge to 6<sup>th</sup> Avenue West. The attached legislation accepts deeds and easements, authorizes the transfer of jurisdiction of property to the Seattle Department of Transportation, and authorizes the Director of Transportation to complete Phase II- related transactions in order to complete the Trail. Additionally, the proposed Bill accepts a revised Quitclaim Deed from the Burlington Northern and Santa Fe Railway Company (BNSF) to correct unintentional omissions from BNSF's original Quitclaim Deed that was provided during Phase I of the Project.

This legislation will allow the City to extend the Lake Union Ship Canal Trail westward from 6<sup>th</sup> Avenue and connect it to the existing bicycle path along West Emerson Street. Once completed, bicyclists will be able to travel between Seattle and Redmond almost entirely by trail. Thank you for your consideration of this legislation. Should you have questions, please contact Larry Huggins at 684-5001.

Sincerely,



GREG NICKELS  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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187488  
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

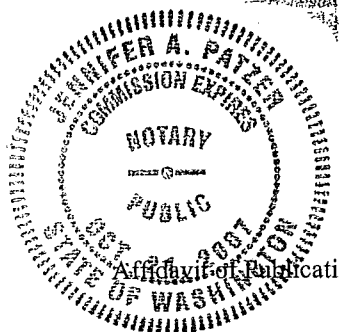
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:121837-121843

was published on

07/05/05

The amount of the fee charged for the foregoing publication is the sum of \$ 106.00, which amount has been paid in full.



Affidavit of Publication

07/05/05

Subscribed and sworn to before me on

Notary public for the State of Washington,  
residing in Seattle

# State of Washington, King County

## City of Seattle

### TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on June 20, 2005, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

#### ORDINANCE NO. 121843

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

#### ORDINANCE NO. 121842

AN ORDINANCE relating to the Department of Parks and Recreation, concerning West Seattle Golf and Recreation Area; accepting a Quit Claim Deed from Charlotte Monson Barmore Revocable Living Trust, in accordance with King County Superior Court Agreed Judgment No. 03-2-35533-0 SEA, to quiet title to land held for park and recreation purposes.

#### ORDINANCE NO. 121841

AN ORDINANCE relating to the Seattle Parks and Recreation Department; accepting a Quit Claim Deed from Seattle Pacific University to the City of Seattle conveying any right, title, or interest in improvements at Interbay Athletic Field.

#### ORDINANCE NO. 121840

AN ORDINANCE relating to the Burke Gilman Trail; accepting deeds from Adventure Trail, Inc. and the Burlington Northern and Santa Fe Railway Company.

#### ORDINANCE NO. 121839

AN ORDINANCE relating to the Ship Canal Trail; accepting deeds and easements; transferring jurisdiction of certain real property near the Ballard Bridge from the Fleets and Facilities Department to Seattle Department of Transportation; authorizing the execution and delivery of deeds of right to the State of Washington; authorizing the acquisition of property and acceptance of deeds; and authorizing the execution and delivery of a crossing easement agreement.

#### ORDINANCE NO. 121838

AN ORDINANCE relating to community development in the Central Area; transferring jurisdiction of land at 20th Ave. South and South Jackson, known as parcel 47 of the Yesler/Atlantic Neighborhood Improvement Project, from the Office of Housing to the Department of Fleets and Facilities; making a related cash transfer from the Emergency Subfund to the Community Development Block Grant Main Fund; amending the 2005 Table of Proposed Projects to the 2005-2008 Consolidated Plan for Housing and Community Development to allocate increased funding resulting from such transfer; increasing appropriations to the Office of Economic Development in the 2005 Budget; and ratifying and confirming prior acts, all by three-quarters vote of the City Council.

#### ORDINANCE NO. 121837

AN ORDINANCE relating to the Chinatown/International District Parking and Business Improvement Area; increasing the assessment rates; and amending Ordinance 117174, as previously amended by Ordinance 120614, in accordance therewith.

Publication ordered by JUDITH PIPPIN, City Clerk.

Date of publication in the Seattle Daily Journal of Commerce, July 5, 2005.

7/5(187488)